United States Court of Appeals

for the Second Circuit

APPENDIX

74-1674

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United States Court of Appeals

For the Second Circuit

VIACOM INTERNATIONAL INC., VIACOM LATINO AMERICANA INC., VIACOM JAPAN INC., VIACOM CANADA LIMITED, VIACOM VIDEO-AUDIO COMUNICACOES LIMITADA, VIACOM INTERNATIONAL LIMITED, VIACOM S. A. and VIACOM INTERNATIONAL PTY. LIMITED,

Plaintiffs-Appellees,

v.

TANDEM PRODUCTIONS, INC.,

Defendant-Appellant.

APPENDIX

VOLUME III OF THREE VOLUMES

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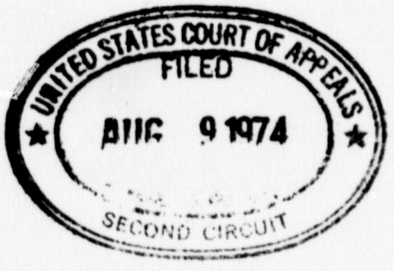

SHEA GOULD CLIMENKO & KRAMER
Attorneys for Defendant-Appellant
330 Madison Avenue
New York, New York 10017
(212) 661-3200

HUGHES HUBBARD & REED
Attorneys for Plaintiffs-Appellees
One Wall Street
New York, New York 10005
(212) WH 3-6500

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TRIAL, SEPTEMBER 19, 1973

(Transcript, pages 441-442)

I was thinking last night on this anti-trust thing, I said that I would reserve the decision on the motion. Do you remember?

MR. PEARSALL: Yes.

THE COURT: I am just wondering whether there isn't some intermediate formula here, and that is, if Tandem would present an offer of proof in writing as to what it intends to prove, then Viacom could object to it on the ground of relevancy because it is not admissible in view of the Bruce's Juices and Kelly against Koyuga and all the rest of it, and that would give us a structure for an appellate court. If I decide that these defenses should not be stricken, then you would go forward with oral testimony in support of your offer of proof.

If I decide the other way, you would be protected in an appellate record by the offer of proof which would be taken as true.

How does that strike you?

MR. GOULD: I think that may be a way to do it. Would you let me consider it?

THE COURT: I thought of it last night. That is why I mentioned it before lunch. You can talk it over, because that would mean, then, you see, that we could adjourn for a brief time for my determination of it. If I determine

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that we should go forward, then we could adjourn for a slightly -- slight reasonable time in order to allow you to get your witnesses together, and I think everybody has the record then that is better than merely a motion for summary judgment.

MR. GOULD: What I would like to do, with your Honor's permission, I would like to discuss it with Mr. Shelton, who has worked on this phase of the case.

THE COURT: He is the anti-trust fellow. Can you do it on the phone?

MR. GOULD: I can't do it this morning. He is not available to me. But I will do it when we get back this evening.

THE COURT: My thought was I would be thinking about it over the weekend and if you people could do it over the weekend, then we would have the offer of proof, Mr. Pearsall would object to it on the ground of relevancy, and we would be able to go forward.

MR. GOULD: Let me talk to Mr. Shelton about it tonight and then we will give your Honor a response in the morning, and that will give us a couple of days to work it up if we do agree to go forward on it.

THE COURT: That's all right.

MR. GOULD: Thank you very much.

(Adjournment for lunch until 2 p. m.)

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TRIAL, SEPTEMBER 19, 1973

(Transcript, pages 443-457, 481-521, 521a, 522-529, 529a, 530-540)

AFTERNOON SESSION:

CROSS EXAMINATION (continued)

BY MR. PEARSALL:

Q Going back, Mr. Hayes, to the June 24, 1970 meeting do you recall whether or not there was any discussion at that meeting as to how soon ahead of air time episodes would be actually produced by Tandem?

A Yes, there was some discussion. I can't recall it specifically. To the best of my recollection it was referred to Mr. Lear's judgment and coordination with programming.

Q Was the discussion in connection with that that the show was to be a topical show, and that therefore it was necessary to actually manufacture the episodes within a very short period of air time?

A Yes, there was some discussion in that context.

Q Was there an understanding reached that in fact the production of the shows would occur within a matter of a few weeks prior to actual air time?

A There was some discussion regarding that, and it was referred for Mr. Lear's discussion with Mr. Jenks and the program people at CBS.

Q In other words, you are saying there was not a resolution at the June 24th meeting right then and there,

that in fact the program would be produced within just two or three or four weeks of the air time?

A. I don't recall any resolution. It's not a point that I would negotiate on. It's a programming point.

Q. Did there come a time, Mr. Hayes, when in fact that question of how soon ahead of air date production would occur was resolved?

A. I am sure there must have been. It was handled by Mr. Lear personally, so I am not your best witness on that.

Q. Did you hear from Mr. Lear that he had worked this out with Mr. Jenks or whoever else he was talking to on the program contest questions?

A. I never received, to the best of my recollection, any information or comment in that context specifically stating, "By the way, I have worked this out."

But that's not unusual. I would not necesarily be told about those things because, while they are important and obviously material to what's going to be done and when it's going to be done, they are primarily creative and production edeicions, not necessarily negotiated in the context of dollars and cents, so to speak.

Q. Did there come a time when you in fact did address yourself to this question, and did?

A. I personally?

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Q Yes, you personally.

A I may have relayed some comment by Mr. Lear at one time or another, but I don't recall that I personally got too deeply involved in that area of it. I may have, but I don't recall it.

Q I show you a copy of plaintiff's Exhibit 12 for identification, which I believe you were shown on your direct examination; isn't that correct?

A Yes, that's right.

Q You testified that you received that; isn't that right?

A yes.

Q The first paragraph of the draft agreement that was attached to the September 25, 1970 letter specifically addressed itself to this question, did it not?

A I am sorry, which one?

Q Paragraph 1 of the draft agreement.

A Of this letter?

Q Of the draft agreement attached to Exhibit 12.

A Yes, it does.

Q Do you recall raising any question with CBS concerning that obligation or proposed requirement contained in Paragraph 1 that production would occur only two to three weeks ahead of air time?

A I respo ded to this submission, as I recall, with two or three points, one or two that were related to Norman Lear responding to it. I think I relayed in that letter some comment in this context, but I can't be clear on it. If you can refresh my mind --

Q Yes, maybe I can. I show you Plaintiff's Exhibit 16 for identification, which purports to be a letter of yours. Would you take a look at that and tell us whether you recognize it?

MR. GOULD: 16 is in evidence, I think.

MR. PEARSALL: Yes, I think it is Plaintiff's Exhibit 16 in evidence, yes.

A Yes, I recognize this. I think it's consistent, yes, with what I have said.

Q In that first item of the five items that you raised with CBS in connection with Exhibit 12, you dealt, did you not, with this question of production in terms of air time?

A Well, as you notice, I say, "This is something that needs elimination from the agreement or detailed and specific clarification so that there be no misunderstanding."

My purpose was to try to clarify exactly what they hadin mind because Norman Lear had raised the point with me to "Let's make certain what they have in mind, so that we will

as it is around on it, so my main purpose here was just to clarify it.

Q Yes, you got into it with CBS, and you sought a clarification of just what it was that had in mind when you saw that requirement?

A Yes, that's right.

Q In paragraph 1 of Exhibit 12, isn't that right?

A That's right.

Q And you raised it in a letter to CBS; is that right?

A Right.

Q Containing a series of comments with respect to Exhibit 12, correct?

A Right.

Q In due course, did you get a response from CBS with respect to that inquiry you were making?

A I think I did, yes.

Q I show you Plaintiff's Exhibit 18 for identification and ask you whether or not you can tell us whether that is a letter you got from CBS commenting upon and in response to the comments you were raising in Plaintiff's Exhibit 17 for identification.

A Yes.

Q Did CBS address itself to this very question

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that you were raising with respect to how soon ahead of air time an episode would be produced?

A. Yes.

Q CBS advised you, did it not, that your statement of the understanding was in accordance with their understanding?

A Yes, that's what they say here. The essence of what is stated therein is in accordance with our understanding.

Q In other words, they agreed with the position that you raised in your letter of October 6, 1970, which is Plaintiff's Exhibit 16?

A I would assume that they were agreeing with it. However, I am not sure that that answered my question, because I was stating that this needs elimination from the agreement or alternatively specific and detailed clarification so there be no misunderstanding, and all they said was "What you say is the essence of what our understanding is," so in reading it now, I am not sure that they clarified it, but they--

Q They stated that the essence of what was stated in your letter was in accordance with CBS's understanding; isn't that correct?

A Yes, and I don't mean to be argumentative but -- and again pointing to what I said was, "This should either be eliminated or further clarification is needed," so when they just say, "We agree," I am not sure it was in that exchange

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of correspondence actually clarified.

Q Were you dissatisfied with the CBS response to your inquiry?

A No, I didn't say I was dissatisfied.

Q Did you write a further letter to CBS raising any further question?

A I don't know. I don't think I did. I may have but I don't recall.

Q You don't recall, do you, that that ever became an issue again?

A No, as I say, it was something that I think Norman Lear actually worked out on his own.

Q At that June 24th meeting, Mr. Hayes, was there any discussion as to when the series would start on the air?

A Yes, sir.

Q What was that?

A Mid-season 1970-71 which was generally January-February.

Q Was there a discussion of the possibility that it might go on the air as late as the faul of 1971?

A Yes, sir.

Q Was there an understanding reached with respect to CBS having an option either to start in mid-season 1971 or the fall of 1971?

A Yes, sir.

Q Was there any discussion on June 24, 1970 with respect to what Mr. Lear's role would bein the production of the series All In The Family?

A Yes, sir.

Q What was that discussion?

A Well, it was discussion of whether he would be merely executive producer or actually producer on the line, and whether he would direct the pilot or not, and whether these services would be performed in New York or Los Angeles, and for how many seasons, if it were successful, would he be obligated to be directly in whatever capacity was contemplated.

Q Taking the question of production in Los Angeles versus New York first, was that resolved at that meeting, June 24, 1970, as to where this was to occur?

A Don Sipes took the position that CBS wanted the right to produce it wherever they wanted to. We took the position not arbitrarily and finally but that we felt our principal -- I took this position, that I felt Mr. Lear would not do it in New York City, and that we would have to counsel with him and see if in fact they wanted to do it in New York City.

Mr. Sipes said, "Well, let's say I will have to check

with my people and you check with yours and we will see.

THE COURT: Do you intend to go over each item, Mr. Marshall?

MR. MARSHALL: Yes your Honor.

THE COURT: On the ground of relevancy?

MR. MARSHALL: I want to establish, your Honor, that each item was agreed to at that meeting, or if it was not agreed to at that meeting, it was agreed to immediately thereafter; so that by the time we reach a period within a month or two following this event, there are absolutely no open items.

This witness has testified that there were a number of open items, and I think that what we would like to do, your Honor, is to establish that in fact there were no open items at all, or if there were any open items, they were resolved within the next very short period of time to the --

THE COURT: With all due respect, you are going around the long way. He has already indicated generally that there was agreement on everything but certain open items.

If you start with the open items and say, "Open item No. 1, was that ever resolved?""Yes." "When was that resolved?" Then you reach your objective which is what I thought you had in mind, but I hate to sit here listening to a repetition of the direct for no reason.

MR. PEARSALL: Very well, your Honor.

Q Mr. Hayes, you indicated that there was an open question at the conclusion of the June 24th meeting with respect to the programming content; is that correct?

A Yes, sir.

Q What was the nature of that open item?

A Well, I am not a very good witness on that point because it had to do with Norman Lear's subjective intent, and the converse intent of the gentlemen at CBS who have that, but generally speaking, NOrman Lear had some very controversial subject matters in mind. They wanted to confine and conform them to their program practices, and so it was a very subjective and delicate question that could only be resolved by those people.

Q That was not something that was discussed on June 24th in your business meeting, was it, with Mr. Sipes?

A Yes.

THE COURT: Why am I interested in that, Mr. Pearsall?

MR. PEARSALL: It has been indicated that this was an open item, that therefore at the conclusion of June 24th there was not a full understanding between the parties.

I would like to establish that it was not a part of that meeting, that it was a part of a different meeting, and that it was resolved at that meeting almost simultaneously

with this meeting. In other words, there is a suggestion now on the record that it was an open point which in fact is not the case, and I would like to establish that in fact it is not the case if I can.

THE COURT: It seems to me quite unimportant and quite irrelevant. It is obvious we have had testimony that this was a new program, that it was controversial, and I suppose they were talking about whether the screening fellows at CBS would approve it if it dealt with abortion, if it dealt with the Catholic Church, and that sort of subject; and I don't think you ever resolve those.

We know that is what the problem was, so it was Lear's judgment against their judgement if they disagreed.

Fortunately, they apparently agreed, and they put out a series. Is that about right?

THE WITNESS: Yes, sir, exactly.

MR. PEARSALL: As long as you feel it's not an essential part of the contract, I am not going to pursue it, but if there is a question as to whether it is an essential part of the contract, then I want to establish taht it was resolved between Mr. Lear and Mr. Jenks on June 26th at a meeting between the two.

THE COURT: What does he know about that? He wasn't there. How can we do it through him?

MR. PEARSALL: This witness may very well know about that.

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THE COURT: That is hearsay to him, and you are the one who is objecting to hearsay.

MR. PEARSALL: Very well, your Honor, let's pass that, shall we?

THE COURT: Yes, let's pass it.

Q I think you indicated that another one of the open points, Mr. Hayes, was a question of holding money. Is that what you said?

A Yes, sir.

Q What did you mean by holding money?

A Money to hold a right of preemption and first position on Mr. Lear's services during the entire option peric

Q Was there a discussion of that at the June 24th meeting?

A Yes, sir.

Q Can you tell us what that discussion was?

A Well, as I testified to on direct, the question arose, Sipes requested having this option on Lear's services as a prior first preemption right in the event they exercised their option to go on for more than 13 shows or if they decided not to do the 13 shows for a mid-season show but rather do it as a fall show, because at that meeting that was not decided either.

And therefore he wanted the option to have the right

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of preempting Mr. Lear's services, and we said, "All right, he has an offer to do a picture and a couple of other things he is considering. If you want him to hold himself available you will have to pay" -- I think it was '' "$100,000 or $20 or something, and we will give you an offset if in fact he does work during that period of time at jobs thathe could do in a short order, and be available to your preemptive rights. We will give you an offset of whatever he earns, but otherwise you will have to pay us thatmoney to hold him off the marketplace because he has to make a living, " and that is generally --

Q Mr. sipes indicated to you right then and there that he was willing to do that, did he not?

A Mr. Sipes indicated that he would be willing to do it, but he didn't want to amke the commitment at that sitting simply because he wanted to find out if it was necessary.

Q Didn't he in fact propose it?

A Did he propose it? No, sir, I proposed it, and to maybe assist -- I don't want to be presumptive -- I'd rather be responsive, but it was ultimately resolved, but not atthat meeting, and not within a day or two.

Q Mr. Hayes, I show you Plaintiffs' Exhibit 76 for identification, and ask if you will take a look at that, please,

and tell us whether or not you have seen that before.

A Yes, I have seen it before.

Q And you saw that within a day or two after its preparation, didyou not?

A I saw it within a day or two after June 25, 1970, which is the date indicated on it, yes.

MR. PEARSALL: Plaintiff offers Exhibit 76 in evidence.

MR. GOULD: I have no objection.

(Plaintiff's Exhibit 76 received in evidence.)

Q Can you tell us what that document is, Plaintiff's 76?

A Well, it says it's a summary of CBS's proposal regarding Those Were The DAys, which is the subject show of this controversy.

Q Did you receive that from Mr. Cohn within a day or two after the June 24, 1970 meeting that we have reference to?

A Yes.

Q I wonder if you would take a look at Paragraph 4 of Mr. Cohn's memorandum and tell us whether or not, after you have read that, part of CBS's proposal in fact was not a holding money for Mr. Lear arrangement?

A Yes.

Q CBS did make that proposal for holding money for Mr. Lear; is that correct?

A I have just testified to the best of my recollection exactly pertaining to this point.

Q Mr. Hayes, in fact, there was no reservation at the June 24th meeting, was there, with respect to going back to somebody else for further authority; it was in fact part of the proposition that CBS was putting forward on that very day, was it not?

A No, sir, that's not a correct statement. I will explain it if you want me to but -- be responsive.

Q I show you Plaintiff's Exhibit 152, and ask if you can tell us what that is.

A That's an interoffice memorandum dictated bymyself dated June 25, 1970 in the form of a memorandum to the file with copies to five people in my company.

Q And does that state that it is a memorandum concerning the latest offer per negotiations 6/24/70 with Don Sipes?

A Yes.

Q And now, I direct your attention to paragraph 12 of your memorandum. That, too, refers to the CBS proposal with respect to the penalty payment they were going to make to Lear as holding money, is that not correct?

A Yes, and I think this confirms exactly what I sai

Q What was left open on June 24 with respect tothis penalty payment?

A What I say here in the memorandum tothe file is CBS is explaining the 1970-71 mid season start, but if they exercise their option to delay the fall, then they must pay a hundred thousand penalty to Norman Lear, which is what Sipes had to go find out about at the first meeting.

Q I'm sorry, I am not following you. Are you talking about a meeting that is different from June 24 or are you talking about the June 24 meeting?

A I am talking about June 24.

Q This is a memorandum of the proposal which Mr. Sipes was making to you at the June 24 meeting, is it not.

A This is what Sipes said he would do on this point, if he found it to be necessary when he went back and checked

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with his program people about what their plans were for the show, and it did in fact occur that way. I am being technical, but I am trying to be responsive to your answer.

Q In other words, Mr. Hayes, on June 24, as recorded in Mr. Cohn's memo and your memo, Mr.Sipes did say that in the event that CBS elected to defer production or airing of the show until the fall of 1971, that they would provide $100,000 penalty payment to Mr. Lear, is that right?

A He said that, but with the added caveat that he must check with his program people first to see what their plans were.

Q As to what?

A As to what they wanted with reference to MR. Lear's services, and he said if in fact these circumstances do pertain, then I will do this for you.

Q He will give you the hundred thousand dollars?

A But he said, for the purpose of the deal, he said, "I will not commit to you on that point at this sitting."

I am being purely technical with you.

Q I understand, Mr. Hayes, that you say you are being purely technical, but you didn't put that caveat, whatever that caveat is, in your memorandum, did you?

A I think I just read it to you.

MR. GOULD: I object. This is argument now.

THE COURT: Overruled.

A I think if you will read that, it says if in fact they do this, they will pay the money, which, conversely implies if they don't,they won't pay it.

Q And now, Mr. Hayes --

A And they didn't, so it never really became effective.

Q And when you say they didn't, isn't it correct, Mr. Hayes, that in fact CBS did elect to air the show in mid season 1971?

A Exactly.

Q So the occasion of the payment of the penalty did not arise?

A That is just what I said, yes.

Q And now, I think, Mr. Hayes, you also indicated that another open item at the conclusion of this meeting was the disposition of the so-called merchandising rights, the right to merchandise products relating to the All In The Family show, is that correct?

A That's correct.

Q Was there any discussion of merchandising on June 24?

A Yes, sir.

Q And can you tell us what that discussion was?

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A I requested that Don Sipes let us keep those rights in Tandem. He said he would take it under consideration.

Q Isn't it a fact that on June 24, Mr. Sipes stated that CBS wanted to have the merchandising rights?

A Yes.

Q And isn't it a fact that you and Mr. Cohn on that date agreed that CBS would have the merchandising rights?

A No, sir.

Q I show you once again, Mr. Hayes, Mr. Cohn's memorandum of that meeting and I refer you to paragraph 5 thereof and ask you to look at that.

Now, it says right there, does it not, that CBS will distribute the program and will be the merchandiser, is that right?

A Correct.

Q Wasn't that the offer that CBS was making?

A Yes.

Q Wasn't that the proposal that Mr. Cohn was recording?

A That's right, but that is not in consistent with what I said. I had asked Mr. Sipes to give it to me and he said he would take it under consideration, and subsequently he did, in fact.

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Q Did you, in your memorandum, make any comment about merchandising still being an open item? I show you 152 again.

A I don't think the memorandum was intended for that purpose, and I don't recall, but I can refresh my mind.

I make reference to a number of open points, but I don't think I mentioned the merchandising in here.

Q Was it left on June 24 that subject to a reversal of you, that Mr. Sipes might have, that it was understood that unless he were to change his mind CBS was to have the merchandising rights?

A He took that position, yes, sir. I did not concede to it. I kept saying to Sipes, "You must do something for us. We need more money or something that I can turn into money," and I made these requests, and on some he said categorically no, as I have testified to; on others he said, "I'll think about it" or "Take it under advisement" or "Talk to my colleagues."

Q Within a week or two following June 24 Mr. Sipes did decide to do something for you, connection with merchandising rights, is that correct?

A Yes, sir.

Q And he gave the merchandising rights back, did he not, to Tandem?

A Yes, sir.

Q Retaining a 15 percent profit participation, is that correct?

A Yes, sir.

Q And that would be within the space of a week or ten days, perhaps, of the June 24 meeting?

A I would think so, yes. I don't remember specifically but I think that is generally correct.

Q And following that resolution there was no further open matter with respect to merchandising, was there?

A I don't recall any.

Q Now, you mentioned that there was something open concerning $32,000 at the conclusion of the meeting.

Would you tell us what discussion was about that $32,000?

A Simply that we owed it to ABC if we sold the series anywhere else on the standard turn-around clause in the industry, and we would like CBS to pay it since we weren't getting any surplus money out of the deal anywhere, and we would like them to pay it, and as I said in my memo here, I think, CBS will not pay any money to ABC; we owe 31,250.

I suggest to Sam Cohn that CMA pay it out of its package commission -- paraphrased -- and he said it was unfair

because they had to pay Beryl Virtue.

I said this is the problem, and he indicated maybe they would pay half.

Subsequently Sam Cohn got CBS to pay half of this.

Q So the confusion of that meeting with respect to the $32,000 was that CBS was not going to pay it, is that correct?

A That's correct. We took the same position there, that we had on merchandising, that we were requesting that they do something on it. Fortunately, subsequently, they did.

Q In that course of that June 24 meeting, while talking about the $32,000, did you offer to CBS that if they would pay the $32,000, which you were required to pay to ABC, that in that event you would use your best efforts to obtain the additional foreign syndication areas on top of the regular network territories that had already been secured for the British on it?

A No, sir.

Q Did the question of your offering to obtain foreign syndication areas come up at all in connection with the $32,000?

A Not that I recall, no, sir.

Q Mr. Hayes, perhaps I have got something that

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would refresh your recollection.

A Good. I will take all the help I can get.

Q I show you a document that is in evidence here, exhibit 575, and I refer you to the language which reads: "Hayes wants us to pay an up front payment of $32,000 to England to acquire rights. Don says no."

Does that refresh your recollection that you were attempting to trade off the $32,000 against efforts to obtain foreign syndication areas?

A That refreshes my recollection, but they are two separate things, sir.

Q They didn't come up together?

A They are two different things. The $30,000 is a payment to the authors on the basic literary rights having nothing to do with the money owed to ABC.

Q You asked for $30,000 to pay somebody else?

A Yes.

Q This is a different $30,000 from the $30,000 that we have been talking about in connection with ABC?

A Yes, sir.

MR. GOULD: Wait a minute. The second $30,000, I thought, was $32,000.

THE COURT: Well, I understand that, Mr. Gould. I seem to be sleeping, but I am still awake.

MR. GOULD: I wasn't even suggesting your Honor was sleeping.

THE COURT: It is obvious what they are talking about.

THE WITNESS: Actually, for the purpose of discussion, if you are going further, it was 31,250, -- my memory is refreshed -- instead of 32,000. 31, 250 on the first item.

Q In any case, on this $32,000, Mr. Hayes, within a week or two following the June 24 meeting, CBS did agree to pay half, is that correct?

A They did agree to pay $16,000 and I don't know what exactly the date was or time frame, but I think it was within 30 days after the meeting, yes.

Q And Tandem, in return, offered to use its best efforts to acquire the foreign syndication areas, did it not?

A No, sir. It is not in that context. Tandem was going to exert its best efforts in all events, but it was not in consideration of that money because it is to our best interests, too, to get the broadest rights possible, but that money was not related to obtaining of broadest rights.

Q It was understood, in any event, then, that Tandem would go forward and use its best efforts to obtain the foreign syndication rights?

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A Absolutely. When you say syndication rights, to obtain the broadest rights of every kind and nature we could.

Q And we are now talking about the rights to distribute?

A Yes.

Q And it was understood with respect to the foreign

THE COURT: No, not the right to distribute. It is a right to exploit in a foreign territory.

THE WITNESS: That's right.

THE COURT: There is a big difference.

MR. PEARSALL: I am speaking now, your Honor, about the right to distribute in syndication, in foreign territories, through sales to individual stations, to networks.

THE COURT: I know what you are talking about, but that isn't what they were negotiating for. They were negotiating for the authors or the previous owner of the copyright or the fellows they were afraid of infringing for clearance in foreign territories and for assignment of those rights.

Am I correct, Mr. Hayes?

THE WITNESS: Correct.

MR. PEARSALL: Perhaps we had better at that

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because I think there is a lack of clarity on this.

THE COURT: There certainly is.

Q Now, Mr. Hayes, of course originally, at the time that Mr. Lear had the idea doing an Americanized version of Till Death Do Us Part, he entered into or his company entered into an arrangement with Mr. Spate, the British author for certain rights, isn't that correct?

A Yes, sir.

Q And those rights were terminated pursuant to the agreement with Mr. Spate when the ABC deal fell apart and it was necessary to go back to Mr. Spate to acquire a new set of rights in connection with this proposed CBS deal, isn't that correct?

A I honestly don't remember, Mr. Pearsall. It may be correct, but I really don't recall it.

Q In any event, Tandem did go back to Mr.Spate and obtained in connection with the CBS deal new rights with respect to All In The Family, is that right?

A That is correct, yes.

THE COURT: Let me see if I understand something.

When you had the ABC deal, what did you give to ABC? You gave them broadcast television network rights. Did you give them any foreign rights?

THE WITNESS: Your HOnor, I honest don't recall

the exact terms of that contract, and the reason I was vague on Mr. Pearsall's question is ordinarily if you actually make a pilot, you have a certain amount of vested time in which to further turn the property to account, and therefore itmay be that our rights continued on over or they may have lapsed and we may have had to go back. But my recollection is that even during the ABC time and carrying on over through the CBS time and in many months thereafter we were in negotiations for whatever rights we could get, simply because of the problems that those authors had with the rights previously.

THE COURT: Because of prior restrictions of contract?

THE WITNESS: Yes, that's right.

Q Now, the essence of the problem was this, was it not, Mr. Hayes, that Tandem was agreeing with CBS that it would give such distribution rights to CBS as Tandem itself would be able to secure?

A That is correct.

THE COURT: No.

MR. PEARSALL: Yes.

THE COURT: The form of the question -- they weren't giving any rights to CBS. They were giving distribution right.

THE WITNESS: That is the question.

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THE COURT: The rights remained in Tandem all the time.

THE WITNESS: I thought Mr. Pearsall said distribution rights. Did Mr. Pearsall's question say distribution rights?

THE COURT: Did it? I didn't hear him, then.

MR. PEARSALL: Yes.

MR. GOULD: May we have it read, your Honor, because I am confused.

MR. PEARSALL: Let me continue and I think may I can clarify the thing.

THE COURT: It is clarified in my mind completely. It is just a matter of your record.

MR. PEARSALL: I want to be sure what is in your mind is in fact correct. I don't know what is in your mind. I just want to be sure what is correct.

THE COURT: I will tell you what is in my mind and you can tell me whether it is correct or not.

A copyright is a bundle of rights. In the television industry it involves several things which are divisible. First, there is network television broadcasting rights which the copyright owner or his assignee has.

Secondly, there is a right of domestic syndication after the network finishes, which he keeps.

There is also the right of foreign exploitation which he keeps.

I am assuming an original copyright now.

Then, what does he do? He licenses the broadcasting performance rights to the television network.

He then gives distribution rights, if you want to call them rights -- I don't call them rights -- a distribution contract for his rights, which he still has for domestic syndication.

He also gives the distributor the right to exploit in certain foreign territories where he, the owner of the program, or the licensee of the copyright owner, still retains his right.

The rights are always his, and that is why the use of this word "rights" is very confusing to me.

Now, is that correct or not?

MR. PEARSALL: Your Honor, basically, I don't think there is any misunderstanding, but the problem arises in this particular case in that it was not an original property which started here, but has the complication that it derives from the British.

THE COURT: Let me go further on what I understand then.

Certain rights which are not in evidence here,

unfortunately, were bought, if you want to use the term "bought," by Tandem. If they had a general deal, they would have bought all rights which would have protected them from infringement, a, in network television, b, in domestic syndication, and c, in foreign territories.

Now, I suppose when they came to the people who owned the rights, the British rights, they said, "We're sorry, we can give you United States, maybe Canada, and we cannot give you, let's say France, because we have an outstanding under the English version with French television which has a year and a half to go, and therefore, if your program would be deemed an infringement on the old program, then you must wait for clearance, either get clearance from the French broadcasting system or we will try to get a termination of that contract, or you will have to wait a year and a half."

Is that about the situation, Mr. Hayes?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: I was responding to the phrase "Distribution rights" in that context.

THE COURT: I just want to get the record straight as to what I understand.

When I am wrong, then go ahead and show me where I am wrong.

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MR. PEARSALL: Your Honor, there is in evidence, as exhibit 158, the basic underlying rights agreement between Tandem and this fellow Spate who was the owner --

THE COURT: I haven't had a chance to read that.

MR. PEARSALL: I am just advising that it is in evidence.

THE COURT: I am glad to know that.

MR. PEARSALL: That agreement has a territorial limitation to it. The licensed areas is specifically defined and included only certain areas such as the United States, Canada and certain other limited areas.

What happened here was that, as I understand it -- maybe we can develop it, but I just don't want to have any confusion about it -- what happened here was that Tandem agreed with CBS that it would give such rights of distribution or contract ofdistribution which it was empowered to do, whatever it was empowered to do, it was going to give to CBS.

It represented that under this it already had certain rights to give a contract in distribution. It represented that it would attempt to get additional rights from the British owner which --

THE COURT: That is paragraph 12 of that exhibit.

MR. PEARSALL: Yes. And ultimately, in fact, Tandem, in the fall of 1971, was able to secure an amendment

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to the underlying rights agreement.

THE COURT: With the British.

MR. PEARSALL: With the British, to expand the definition of licensed territory and perhaps without further dual offer as exhibits now, while we are talking about it, the two amendments which expand the licensed area.

THE COURT: Very good. Very good.

Now, I would call them, if I were you, 158A and 158B so we know they relate to 158.

MR. PEARSALL: They are 159 and 160.

THE COURT: That is just as good.

MR. PEARSALL: Plaintiff's offer 159 and 160 in evidence.

THE COURT: What was the date of those?

MR. PEARSALL: One is dated October 5, I believe 1971 and the second is November 22, 1971.

THE COURT: And by that time did they have world wide rights?

MR. PEARSALL: This expands the territory substantially but not as full as world wide. In other words, world wide rights, so far as I know, your Honor, have never been secured. But this substantially expands in various foreign areas the right to distribute.

MR. GOULD: I have no objection to 159.

No objection to 160.

THE COURT: I am going to make a suggestion, if I may, and that is if you are going to deal with it territory by territory or area by area, somebody ought to get up a chart as to what are the open areas where you have clearance; when did that clearance take place. Then I could test if this becomes an issue whether, given the number of places where Viacom was free to act, theyreasonable performed.

In other words, if they have only four territories and they did three out of four, that is 75 percent. If they had a hundred seventy-five territories and they only did four, then they might only have a very small percentage. I am not saying it is dispositive, but I want to see that.

(The plaintiff's exhibit 159 and 160 received in evidence.)

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MR. PEARSALL: The areas that are defined in these two amendments are the only additional areas beyond the initial ones.

THE COURT: Then you don't need it.

MR. PEARSALL: That were ever developed.

THE COURT: Let me see if I can state this for the record.

If there is any argument about it, let's have it now.

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On October 5, there was expanded -- the licensed territory definition was expanded to include, one, all countries in Europe; two, those countries in the Middle East, and Far East and African territories not within the British commonwealth, and I suppose there should be a comma there, and the last category, Latin America, I suppose subject to certain limited reservations.

Then you have an inclusion of Australia. So the only thing that may not have been given is India, I suppose. There is no definition of the Middle East anywhere?

MR. PEARSALL: There certainly isn't here.

THE COURT: When you take Europe and the Middle East, together it is obvious how far it goes. And then when you say Far East, I suppose that goes to the border of India and Africa, the whole continent.

MR. PEARSALL: We are, in fact, selling the Far East.

THE COURT: I don't care where you are selling. I am just trying to find out what we are talking about.

MR. PEARSALL: I assume the Far East would include Hong Kong, for example, the Philippines, this kind of thing.

THE COURT: What I am trying to say, what have you got; you have got North America, you have got South America, I suppose Latin America includes Central America,

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and South America.

MR. PEARSALL: I assume so.

THE COURT: And you have all of Africa. You have really got all of Asia. You have got all of Europe. And then you have got Australia, so you may not have the British Empire including New Zealand, and you may conceivably not have India, but otherwise you seem to have India.

MR. PEARSALL: It is pretty broad.

THE COURT: That is the question I was asking.

MR. GOULD: It included New Zealand and Australia. It does in the movie business.

THE COURT: So, in effect, you practically have, by this time, world wide exploitation rights.

MR. PEARSALL: I think this is helpful in clarifying the situation.

Q Going back, if we may, Mr. Hayes, to the June 24, 1970 meeting, I believe that you indicated that there was an open issue with respect to office space, is that correct?

A Yes, sir.

Q What was the nature of that open issue?

A We had requested office space free of charge at CBS.

THE COURT: What is the point of this? It is awfully boring.

MR. PEARSALL: It was stated there was an open issue with respect to this question. I think we can establish in very short order --

THE COURT: He has explained it. It is something for cross-examination? He said they wanted some office space in the studio.

MR. PEARSALL: It was resolved, your Honor, immediately, and CBS gave free office space.

THE COURT: This is cross. You don't have to go through all this. You just say to him now, isn't it a fact, Mr. Hayes, that this dispute about office space, if there was a dispute, was very promptly resolved and you got office space in the studio?

MR. PEARSALL: Actually, your Honor, that is fine, but it was also resolved on June 24, as both memos indicate.

THE COURT: What difference does that make?

MR. PEARSALL: If it is not an essential term of the agreement, then, fine.

Q Mr. Hayes, you indicated that there was an open question at the end of the meeting with respect to whether a production advance would be made. Do you recall that?

A Yes, sir.

Q What was the discussion on June 24 with respect

to the production advance?

A I merely requested one from Mr. Sipes and he said he would take it under advisement. He indicated he would try to give it to us, but he would not make a commitment at that sitting. He did ultimately give us the production advance.

Q Now, your paragraph 10 of your memorandum, plaintiff's exhibit 152 for identification, states: CBS will provide a production advance as needed, estimate $50,000.

Did Mr. Sipes agree on June 24, to provide a production advance as needed, estimated at $50,000?

A Mr. Sipes said he would take it under advisement and would let me know.

THE COURT: Did he let you know?

THE WITNESS: Yes, sir.

THE COURT: Did he say yes?

THE WITNESS: Yes, sir.

THE COURT: When was that?

THE WITNESS: In the next day or two.

THE COURT: Okay. Next point.

Q So that in fact all of these open matters that you had reference to in your direct examination, MR. Hayes, were all resolved either on the 24th or shortly thereafter?

MR. GOULD: I object to that. That is not what he said.

THE COURT: Well, he can say no just as well as you, Mr. Gould, and he is just as smart, I think, as you and I and everybody else in the room. He is a very smart fellow.

THE WITNESS: Thank you.

THE COURT: Answer it.

A They were resolved within a matter of a few days, certainly not over 30 days on any issue that I recall, that I named as being open when we concluded the June 24 meeting, and including my client's willingness to go forward and approve the terms we finally got that I took home and presented to them after the meeting.

Q And they did approve them?

A Yes, sir.

Q And that was reported back to Sipes in due course?

A Yes, sir.

Q Now, you indicated in your direct examination, however, Mr. Hayes, that there was some kind of negotiation that continued; you talked about the discussions with Mr. Sipes and the discussions with Mrs. Nelson, discussions with Mr. Rubin, and I think that you portrayed a picture of somehow continuing negotiations.

Now, when was the first negotiating meeting or conversation that you had following the resolution of these open points which you say were resolved very shortly after

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June 24?

A Within 30 days. I can't pinpoint it any more accurately than that.

Q What did that deal with?

A Well, as I have testified to before, it dealt with the question of facilities and which items would be below the line and not be below the line, and casting and director. There may have been other items, but I recall specifically those in response to your question.

THE COURT: These were items within the framework of the deal, isn't that right?

THE WITNESS: Yes, sir, they were.

THE COURT: None of these was going to bust the deal, was it?

THE WITNESS: Well, generally speaking it would not, but it could have. I think as a general rule of custom and usage in the business, even where you have situations like this, generally you get together.

Q These were just loose ends, weren't they, Mr. Hayes.

A Well, Mr. Pearsall, I wouldn't characterize them as loose ends because they were material and important.

Q Which were the material ones? I don't think any of us wanted to hear the immaterial ones. Let's goto the

material ones. Which were they?

A Certainly the director is material. Certainly the casting is material, certainly for monetary purposes, which items you put above or below the line, were material in view of the type of deal that I have described. I think all of them were material.

Q What was the issue about the director? The producer would go pick a director, would he not?

A No, sir, not without approval of CBS.

Q So, in other words, until Tandem went out and selected a producer, the occasion for CBS's approval or non approval wouldn't even arise?

A Well, you may recall my testimony that there was discussion at the 24th meeting about Norman Lear personally directing or absent his directing, Mr. Yorkin, his partner, directing, andabsent that, the question of director would be something to be resolved as a material point of agreement between the parties.

Q Did Tandem secure the services of director?

A Yes, sir.

Q What was his name?

A John Rich.

Q When did that happen approximately?

A I don't remember the exact date.

Q It was in the fall, was it not, August or September?

A I think so, yes.

Q And CBS did approve Mr. Rich at that time, isn't that correct?

A Yes, sir.

Q What was the casting question?

A Who is going to play the parts.

Q It was already determined at that point who the leads were, was it not?

A Carroll O'Connor.

Q And Jean Stapleton?

A Jean Stapleton, at the 24th meeting -- are you still talking about the 24th meeting?

Q All right, let's see what the problem was on casting? What was the open question on casting?

A There was a question about Jean Stapleton being willing to do it if you did it in California. She had categorically said she would not. She would not move to California.

Q All right.

A And the qestion was, who do you get if you don't have Jean Stapleton.

Q Okay, it was decided to take Jean Stapleton, was

it not, in the next month, during August it was decided to take Jean Stapleton?

A I think we decided we wanted Jean Stapleton right from the beginning, but the question was, could we have Jean Stapleton, and if not, who could we have?

Q All right.

A Because, without proper casting you don't have a show.

Q And when was this casting question with respect to Miss Stapleton worked out?

A I don't remember it exactly, but obviously it was worked out prior to the time of production. I didn't handle that, so I can't give it to you.

Q This would be in about August or September, isn't that correct?

A I think that I have testified --

THE COURT: You already said so. Let's get on.

A I really don't know, Mr. Pearsall.

THE COURT: You also had recast the two young people, didn't you?

THE WITNESS: Yes, sir.

Q In any event, it was resolved sometime in the early fall, is that correct?

A I think I have testified to the fact that producti

started in November. I am reasonably sure it was resolved prior to that date, but I don't remember when. I honestly don't.

THE COURT: Are you going to question on that, Mr. Pearsall?

MR. PEARSALL: No, your Honor.

THE COURT: Good.

Q Now, I show you plaintiff's exhibit 402 which is in evidence, and ask you whether or not that is a letter you received from Mr. Perry of CBS?

A Yes, it appears to be.

Q And you received that on or about July 16, 1970?

A I would say it is reasonable to assume, since it is dated July 16, that I received it within a few days thereafter in California. This stamp is Sid Lyons, New York, so it is not the correct date that I received it on.

Q With that letter CBS provided to you the $50,000 advance, did it not?

A Yes, sir.

THE COURT: I think we will take a five minute recess. We are going to adjourn at four o'clock, I announced before, so we have another hour to go.

(Recess.)

BY MR. PEARSALL:

Q Mr. Hayes, apart from the casting questions, which you say were resolved along with the director problem, were there any other material loose ends that had not been resolved in the summer of 1970 with respect to this deal between Tandem and CBS?

MR. GOULD: I assume that material means material in his judgment

MR. PEARSALL: That's correct.

A Within my fram of responsibility with reference to che material open points of the June 24th meeting, they were resolved sooner or later, and to the best of my recollection, they were resolved within the next 30 to 60 days.

THE COURT: Which would end when, so I can follow it?

THE WITNESS: I would say probably -- there is only one thought that comes to mind, which was the allocation of above and below the line that might have stretched out past that, but generally by the end of August.

THE COURT: 1970?

THE WITNESS: Yes, sir.

Q Were there any other discussion or negotiations with CBS that you know of in econnection with this deal prior to the distribution on September 25, 1970 of the draft agreement which I showed you a moment or two before, and which is

Plaintiff's Exhibit 12, other than these matters that you have just testified to which resulted in the resolution of various outstanding questions?

A. I am sorry, Mr. Pearsall, you lost me. Could I --

THE COURT: Read the question back, please.

(The pending question was read.)

MR. PEARSALL: I will strike the question and start again.

THE COURT: Yes, you better do that.

Q. Apart from the discussions that resulted in the resolution of these open points, Mr. Hayes, were there any other discussions with CBS regarding the deal between Tandem and CBS prior to the distribution of Plaintiff's Exhibit 12 on September 25, 1970?

A. Yes, s ir.

Q. Can you tell us what those discussions involved?

A. Well, you understand my frame of responsibility is in primary deal point negotiaton. I have nothing -- strike that -- I have very little primary responsibility in the area of creative, production matters which would relate to people, facilities, context, nor the legal aspect of so-called boiler plate negotiations. That is handled by the attorneys for Tandem.

So in response to your question, there were

discussions between the producer of the show, Norman Lear, the executive producer of the show, and Bud Yorkin as president of Tandem, and with CBs people regarding facilities, below the line personnel, and other matters pertaining to production, and I seem to recall Mr. Perlberger talking to somebody about the contract within this time frame, but it may have been later.

But in answer to your question, within my frame of responsibility, there was nothing, no, but I want to be sure that I don't misunderstand the question, and that is why I answered it the way I did.

Q When you received Plaintiff's Exhibit 12, the draft agreement, you immediately raised a number of points with Mr. Perry of CBS; isn't that so?

A Yes, sir.

Q And Mr. Perry promptly thereafter responded with a resolution, a proposed resolution of each of the points that you raised; isn't that correct?

A Yes, sir, he promptly responded.

Q And his response is Plaintiff's Exhibit 18 for identification, a letter of October 20, 1970; isn't that so?

A Yes.

Q and he states at the end of his letter, does he

not, that he trusts that all the outstandingproblems are now resolved; is that right?

A. He said, "All of the foregoing matters."

Q. "I trust that all outstanding problems are now resolved." He said that, did he not?

A. "I trust that all outstanding problems are now resolved," but in context he says, "I wish to thank you for your patience in all of the foregoing matters, and I trust that all the outstanding problems are now resolved."

Again, I want to be sure we are in my frame of responsibility, because again, there wereother problems that were outside the scope of my frame of responsibility and --

Q. You did not get back to Mr. Perry with any open problems within your sphere of responsibility, did you?

A. No, sir, because as you will note in that letter, I said in addition to Mr. Perlberger's and Mr. Cohn's comments, these are mine, which is consistent.

Q. In other words, you said"these are my comments, but maybe Mr. Cohn and Mr. Perlberger will have additional comments"?

A. Correct.

Q. Did you ever see a letter from either Mr. Cohn or Mr. Perlberger to CBS commenting in any way, shape, or form on the draft agreement which is Plaintiff's Exhibit 12?

A Yes, sir.

Q Can you tell us what that letter was and who wrote it?

A Well, I distinctly recall a letter from Mr. Perlberger to CBS.

Q I would very much like to see that letter. WE have sought production in this case of all such matters, and no such letter so far as I know has been produced.

THE COURT: There is one in evidence, isn't there?

THE WITNESS: Maybe I misunderstand the question.

THE COURT: I don't understand it either. Isn't there one where Perlberger says, "I object to the assignment clause, strike out in part"?

MR. PEARSALL: No, sir, there is not. What there is, and what you are thinking of is a memorandum by Mrs. Nelson to Mr. Perry, Mrs. Nelson is a CBS employee, of a conference, a telephone conference that she had with Mr. Perlberger in April of 1971. There is no Perlberger letter to CBS, and the only evidence we have of anything being raised comes in April, some eight maths later, six months later.

What I am looking for now is whether or not there was any further comment by Tandem to CBS in writing raising any questions in addition to those which Mr. Hayes raised, and which were promptly resolved by CBS in Exhibit 18.

THE COURT: When ? 514

THE WITNESS: That is my confusion too, your Honor. I thought you said if any ever.

Q Mr. Hayes, you say that there was a letter that Mr. Perlberger wrote to CBS?

A Yes, sir. I don't know when or what time frame, but I do recall Mr. Perlberger making comments on the CBS proposed agreement.

Q In written form?

A That's my best recollection. I may be confused.

THE COURT: Let me see if I can clarify this a little bit. Let's divide this into two time periods. One is the period before the first draft agreement was sent out, which I believe was when, September 1970?

MR. PEARSALL: September 25th.

THE COURT: Up to September 25, 1970 was there anything in writing directed to Tandem by Mr. Perlberger or any other legal person objecting to anything that you say had already been agreed upon?

MR. GOULD: I think your HOnor didn't mean directed to Tandem.

THE COURT: I meant directed to CBS, I beg your pardon.

THE WITNESS: No, sir, I don't think so.

THE COURT: Let's take after September 25, 1970, when

the first draft was submitted. Was there anything in writing from the legal people in Tandem or representing Tandem to CBS that you know of complaining?

THE WITNESS: Yes. I may be all wrong, but my best recollection is some time I saw a letter from Martin Perlberger to CBS of which I got a copy, commenting on their proposed agreement. It may not have been in response to this. My recollection may be bad, but I think there was one at some time.

THE COURT: Let's wait till Mr. Perlberger gets on the stand since he ahs been promised to us as a witness.

MR. PEARSALL: All right, your Honor.

THE COURT: If he doesn't have it in his pocket and there is such a thing, he can telephone today and get it from California.

Q Did you personally have any additional contact subsequent to your letter of October 6, 1970, with CBS concerning the deal between CBS and Tandem prior to your meeting with Mr. Sipes on March 25, 1971?

A Yes, sir, I think within that time frame I did have some conversations with Anne Nelson and Jerry Rubin on the west coast.

Q And those were the ones that related to production problems that were cropping up?

A Yes. That's right.

Q Were those productio problems resolved between you and Mr. Rubin and Mrs. Nelson?

A Yes, sir. I think there are some exhibits in evidence, as a matter of fact, supporting that, where I argued about what was below the line and what was above the line.

Q This business of the above the line and below the line thing again?

A Yes.

Q That was resolved, was it not?

A Yes, that's correct.

Q In your direct testimony, you testified about a meeting that you had with Mr. Sipes and Mr. Yorkin and Mr. Lear in Los Angeles on March 25, 1971. Do you recall that?

A Yes, sir.

Q You indicated in the course of that examination that there was some discussion about Tandem getting the distribution rights back, the rights to distribute?

A Yes, sir.

Q Will you tell us exactly what the conversation was between you and Mr. Sipes with respect to that question?

A Well, I think, as I said on direct, we had this meeting. I requested it and told him I wanted to have a meeting to improve the deal, and I asked for him to convert it

to a straight license fee. I asked for additional money on the budget, and I asked him to give us the -- to give back to us the control of the righs related to distribution of the product off network.

Q Mr. Hayes, do you recall testifying in a deposition in this action in August?

A Yes.

Q Between that time and this, have you had occasion to refresh your recollection further as to the proceeding which occurred on March 25, 1971?

A Yes, I talked to Don Sipes.

Q When did you talk to Mr. Sipes?

A I had dinner with him either last Saturday -- last Saturday, I guess.

Q What was your discussion with Mr. Sipes regarding the March 25, 1971 meeting?

A We were talking about how I kept trying to get certain things from him, and I kept telling him that he -- kidding him about the fact that he wouldn't give me anything, and if he had, we wouldn't have had all this problem, and so forth. It was a very friendly evening. That was the course of the conversation.

In it he reminded me that I had asked him to give back to us or to give to us the license fee and the money and the

distribution rights and the things, and I saidyes, I recalled that. 518

Q This is just last Saturday?

A Last Saturday night.

Q Mr. Sipes told you last Saturday that on March 25, 1971 at that meeting you had asked back for the distribution rights? Is that what you are testifying to, Mr. Hayes?

A We were talking about it in the course of dinner conversation, yes.

Q And he said in the course of this dinner conversation, "Don't you recall, Mr. Hayes, how you asked me back for the distribution rights at this meeting on March 25, 1971?" Is that what you are saying, Mr. Hayes?

A No, that is what you me saying. I didn't say that.

Q Will you tell me what you are saying happened last Saturday night with respect to Mr. Sipes in connection with these distribution rights and the discussion on March 25 of 1971?

A I will try again to tell you.

Q thank you.

A We were having cocktails and dinner, and in the course of the evening of discussion, discussing the situation and the lawsuit and various matters pertaining to it and the history of it and all of the things that one would discuss

in that kind of a conversation, I said to him something like,

" You see, if you would have given me all the things I asked you for, we wouldn't be having this problem."

He said, "Well, sometimes with all the inconvenience and things that we have, I wish I had just so I wouldn't have the problem, but I had my job to do and I couldn't give it to you, you know," and that was it, and that's the context in which it caem up. It was not specifically, "Do you recall, " so forth and so on.

Q Did you discuss with Mr. Sipes the March 25, 1971 meeting?

A Yes.

Q Specifically?

A Yes, and I discussed with him the telephone conversation regarding the assignment too.

Q Please tell me in as exact a way as you can manage Mr. Hayes, what Mr. Sipes told you last Saturday night with respect to the discussion of distribution rights at the March 25, 1971 meeting?

A He didn't tell me anything other than I have said, Mr. Pearsall.

Q I don't think you have said anything very clearly about this yet.

MR. GOULD: If your Honor please, I think he has

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answered this. He's told him what he remembers about the conversation with Sipes.

THE COURT: But he is trying to put his mind specifically on whether or not -- I think there is an assumption in the question, which he can do in cross examination.

MR. GOULD: Yes, of course he can.

THE COURT: That he did say something about it. I haven't heard anything yet that Sipes did say about a specific meeting, so the first question is, did Sipes say anything about the March 25, 1971 meeting. I would assume that is the preliminary question.

MR. PEARSALL: I am sorry, I thought the witness had testified to that, but I will ask that question.

Q Did Mr. Sipes discuss with you and identify the March 25th --

THE COURT: No, you are repeating it again in the wrong form. That is the point. Not "discuss with you." Did Mr. Sipes say anything? Let's pin down who the speaker is. Then we will go on to the other thing.

MR. PEARSALL: All right, very good, your Honor.

Q Did Mr. Sipes say anything about the March 25, 1971 meeting?

A He said it in response to my comment that I made to him where we were saying how inconvenient depositions and things

are, and the worst way in the world to settle a problem 521
is a trial, and I said, "Yeah, if you'd just given me what I askedyou for we wouldn't ahve all this inconvenience."

And I said, "When I came into Jerry Rubin's office with Bud and Norman" --- no, he said, "Look, I tried to be nice to you and give you what you asked for, and I did give you a lot of it. I converted it to a license deal, and I gave you extra money, and I couldn't give you the distribution rights, and you knew it then."

And that's pretty clear, pretty much what was said. It was in the course of cocktails and dinner, but it was not formal, "Do you remember a certain meeting on a certain day you did this and that and the other."

Q So the March 25th meeting was not specifically identified in either your statements or Mr. Sipes' statements?

A I said to him, Mr. Pearsall, "If when I came in with Bud and Norman to Jerry Rubin's office and asked you to give us these things you had given them to us, we wouldn't have all this inconvenience."

Now, the only time we went to Jerry Rubin's office was March 1971.

Q Did you tell Mr. Sipes last Saturday night that you had asked him in Jerry Rubin's office for the distribution rights?

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A. Mr. Pearsall, I again have to tell you that it was in the context of saying to Mr. Sipes in a chatting, friendly way, "If you had given methese rights, when we were in Jerry Rubin's office, we wouldn't have all this inconvenience." Now, you know I am not going to --

Q. Did you tell him that you had asked for the distribution rights in Jerry's office when you had this discussion with Mr. Sipes?

MR. GOULD: It has been asked and answered three times. He is telling him what he did say.

THE COURT: I think so. I think he has answered it as best he can, Mr. Pearsall. I don't know what else he can tell you because apparently he has identified an occasion which by reference is of a particular date. He has identified the poeple who were there; he has identified the dinner conversation; he said what he said and what Mr. Sipes said.

I don't know what else he can tell you.

MR. PEARSALL: I am not at all clear, your Honor, that it is clear on the record what was aid by way of identifying last Saturday night whether distribution rights had been asked for on March 25th.

I have heard a lot of general discussion from Mr. Hayes just now, but it has been very imprecise, and I am

not at all clear that we have got this pinpointed.

THE WITNESS: Well I think - - maybe I am wrong, but I think this all started talking about a meeting in Jerry Rubin's office on March 1971, and you asked me if there had been any refreshment of my recollection on that meeting, and the only refreshment I recall was my casual dinner conversation where I said what I said to Don Sipes, and he responded, "Heck, I gave you -- I thought I was being nice to you. I gave you everything I could. I couldn't give you the distribution rights."

Q Did Mr. Sipes in his response to you on Saturday night say or acknowledge in any way that he on March 25, 1971 -- on that date as opposed to some other date -- had declined to give you on that date the distribution rights?

MR. GOULD: That is the same question.

THE COURT: I am not going to allow anything further along this line. It seems to me perfectly clear that by reference the statement of where the conversation took place and who was present and the independent evidence concerning the date indicated exactly what meeting the witness was speaking about.

You have asked him three or four times, Mr. Pearsall. I am afraid we will have to go on to something else.

MR. PEARSALL: Your Honor, I am perfectly willing to

go on but my point is this: I just would like to make one last plea, your Honor.

THE COURT: Go ahead, I am not cutting you off, but I think on that line you have exhausted it.

MR. PEARSALL: All right, I may have, but what I don't believe is as yet clear on the record is whether Mr. Sipes' statement in response to Mr. Hayes' statement contained within it an acknowledgement that he could not give the distribution rights at that meeting as opposed to the prior time.

They had undoubtedly discussed the distribution rights at an earlier date, and I think there is a confusion in the record at this point because I think the way it now appears, the suggestion at the moment on the record is that Mr. Sipes acknowledged somehow last Saturday night that he had refused again to give the distribution rights on March 25th, and I think that if I am permitted to explore this with this witness a little further, we will establish that Sipes gave a generalized response that was not identified with the March 25th meeting, but had reference generally to having tried to give Mr. Hayes everything he coudl.

THE COURT: You may do that, but just assume that the reference to the people present and the place, since it happened only once, happened on that particular day.

MR. PEARSALL: I am not arguing about that, your Honor.

THE COURT: All right, then go ahead.

Q Mr. Hayes, you have made it quite clear what your comment was thatled to Mr. Sipes' response, and I would like to have you state as clearly as you can precisely what Mr. Sipes' response was to your statement.

MR. GOULD: If your Honor please, now I am completely confused. Is he asking him what he said last Saturday night?

MR. PEARSALL: That's correct.

MR. GOULD: We have had this now twice.

THE COURT: WE have had it several times, I must say, but --

MR. PEARSALL: May we have it just once more?

THE COURT: If you ask the question, we wll have it once more, but if you ask the same question, you will get the same answer. That is the difficulty. You must ask a different question.

MR. PEARSALL: Let me ask a different question, your Honor.

THE CORT: May I try it just this way, or would you rather go ahead?

MR. PEARSALL: No, I would be delighted if you would help me out, your Honor.

THE COURT: I don't know if I can help you out, but was there any indication in any form at all by Mr. Sipes as to

whether in his response to you he was referring to a particular meeting?

THE WITNESS: Mr. Sipes did not state any particular meeting, no, sir, but it was in response to my statement which indicated --

THE COURT: All right, I think that is about as good as the record can get.

MR. PEARSALL: I agree with you, your Honor.

Q Mr. Hayes, in your direct examination, i believe you mentioned a Mr. Jamieson; is that correct?

A Yes, sir.

Q Who was Mr. Jamieson?

A To the best of our knowledge he is involved some way in the selling of the show in Canada. I don't know what his position is.

Q I show you Plaintiff's Exhibit 154 for identification and ask you whether or not you can identify that as a letter that you received from Mr. Yorkin.

A Yes, sir.

MR. PEARSALL: Plaintiffs offer Exhibit 154 in evidence.

MR. GOULD: No objection.

(Plaintiffs' Exhibit 154 received in evidence.)

Q Does that letter refresh your recollection that this Mr. Jamieson who is involved in the failure of CBS to make a

network extension sale in Canada was a CBS employee?

A Yes, s ir.

Q He wasn't a Viacom employee; is that correct?

A WEll, I really don't know. The letter indicat he is a CBS employee, but as I said, I really don't know w his position is.

MR. GOULD: I will be very happy to have an affirm by Mr. Pearsall which it is. We don't know either. I w take his word for it.

THE COURT: From the context, I suppose he is with CBS.

MR. PEARSALL: The letter contains a complete explanation.

THE COURT: You will recall, gentlemen, that I as you to get up an index of names at the conclusion or whe it is convenient foryo, so that we can have a designatio each person mentioned in these letters and memoranda as t who he was. and by whom he was amployed, so we can follow it because they generally are not on stationery that is identifiable.

MR. GOULD: We will indeed, your Honor, but you see, with respect to this gentleman, Mr. Jamieson, the letter is dated June 7, 1971, and if you remember Mr. Block's testimony that is just about the time that the functions are moving

from CBS to Viacom, so if Mr. Pearsall tells us on his responsibility that the man is a CBS employee and not a Viacom employee, I will make no further issue of it.

THE COURT: I think it is obvious internally, although you can always correct it. Obviously, if Jamieson is trying to sell anetwork show in Canada, he must be for the network because Viacom didn't have the rights so he couldn't possibly be a Viacom employee.

It seems so obvious it doesn't pay to pause on it but if I am wong about it, then just inform me.

MR. PEARSALL: It is obvious and the letter clarifies it so why don't we just pass on.

Q Passing, Mr. Hayes, to the period beginning in the fall of 1971, and this would be the period after the Brow Derby meeting that you discussed on your direct examination, I believe you stated on your direct that you had some discussions with Mr. Block conerning what you considered to be shortcomings in his conduct of the Viacom activity. Do you recall that?

A Yes.

Q I would like to go back to those statements, Mr. Hayes, and I would like to take them in order to the extent that we can do so, having in view your hazy recollection.

When was the first conversation that you had with

Mr. Block following the Brown Derby meeting on July 19, 1971?

A. To the best of my recollection, Mr. Block telephoned me the next day and chatted briefly about how I thought the meeting went and so forth.

Q. All right, let's pass that one. What was the next one?

A. I honestly don't recall, Mr. Pearsall, exactly when it was.

Q. In approximately what time frame did it occur?

A. I would imagine within the next thirty days.

Q. That would be in August, then, is that correct, some time in August?

A. I am only guessing.

Q. All right. It would be approximately August; is that correct?

A. that's right.

Q. What was that conversation? Who said what to whom?

A. Mr. Block said that he was going to have a presentation prepared along the lines we discussed at the Derby, and Joe Irwin would be handling it, and I don't recall whether it was before or after Joe Irwin had dropped by to see me, but Mr. Irwin had in fact come to see me, and we had discussed some things, and Mr. Block said he was going to prepare

a proposal to send to us.

Q That was in August. Eventually a proposal did come in to you from Mr. Irwin; is that correct?

A Yes, that is correct.

Q You passed that on, I suppose, to Mr. Perlberger; is that right?

A Yes, sir.

Q What was your next contact, you personally, your next contact with anyone at Viacom?

A Mr. Pearsall, I honestly don't recall exactly what it was.

Q Approximately.

A I just really don't recall when it was. I know I had various contacts through the months that followed but I really don't know whether it was very soon thereafter or a month or two past or whenever it was, but it was in the latter part of '71, and the first half of 1972 that we --

Q All right. Let's forget the specific time then, and go to what you recall by way of subject matter of the first discussion. What was the subject matter of the first discussion?

A To the best of my recollection, Bud Yorkin had called and he had expressed some unahppiness about not getting information, and I called Willard Block, and I said, "Hey,

Willard, I thought we were going to have a clear exchange of information, and your people apparently are not doing it. Will you do something about it?"

He said generally, "Yes, of course I will. I am sorry and I will do something about it."

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Q Pardon me, complete your answer. 530

A I was going on to subsequent conversation.

Q No, let's pause and stay with this for a moment.

A Okay.

Q You complained to Mr. Block that he was not providing some kind of information, is that correct?

A I think I said that Mr. Yorkin said he was not happy and was not getting the information, would he please do something about it.

Q What kind of information are we talking about in that conversation, Mr. Hayes?

A Oh, I think information regarding where deals were being made and with whom and on what terms and things like that, because Yorkin had requested this, as I previously testified, and Mr. Block had said he couldn't do it on day by day basis or every small deal, but he would try to do it on the basis of substantial deals, and in all events he would give Yorkin memos when deals were made after the fact. And Yorkin was complaining about that.

Q Was this causing -- was this lack of information causing any practical problems for Tandem?

MR. GOULD: I object to that, your Honor.

THE COURT: I should think you would want the answer.

MR. GOULD: I do want the answer, but I want it from somebody who can give it to us. If he wants to ask whether he knew --

THE COURT: Well, it has been testified to so much on direct examination that I think it is repetitive.

MR. GOULD: Very well.

THE COURT: I think counsel has a right to ask it on cross-examination again.

MR. GOULD: Very well. I will withdraw my objection. I concur.

THE COURT: He has described in great deal about these residuals.

MR. PEARSALL: I think quite inaccurately so, your Honor.

THE COURT: That may be. You have a right to cross-examine. But the subject matter was certainly raised.

MR. PEARSALL: No question about it.

THE COURT: Go ahead.

A I can only tell you from my own knowledge again, as I said on direct, that MR. Yorkin seemed to feel it was a problem. Keith Nichol, who was in charge of production accounting, seemed to think it was a problem, and they asked me to try to get something done about it and that is what I did, in the conversations with Mr. Block.

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Q All right, now, I think you said on direct that the problem had to do in some fashion with residuals, is that correct?

A That was one of the problems, yes, sir.

Q Will you tell me what the problem was with respect to residuals?

A Well, the problem was that apparently Mr. Yorkin reported that he had received calls from the Guild representatives or actors or somebody saying we understand the show is sold in certain areas; where are our residuals? Whether it was actors or music or writers or whatever.

He said he was embarrassed, that Tandems image was going to be hurt if we didn't pay these things promptly and did we have the information from Viacom or was it our offices fault in not paying.

Keith Nichol reported he did not have the information from Viacom, upon which to make any payment, nor had he received remittances, but that he would follow up to the best of his ability and get it.

I called Willard Block, relayed this information to Mr. Block, and I asked him if he would please have his people do something about this, and that was pretty much of the context of the subsequent calls, too.

Q Now, Mr. Hayes, is there a difference between

the residuals which are paid to talent on the one hand as against residuals which are paid to writers and directors on the other hand?

A Yes, sir. Each Guild has his own collective bargaining agreement.

Q There are separate Guilds involved in these two situations, is that correct?

A Yes, sir.

Q And AFTRA is the Guild that is concerned with the talent, is that correct?

A Yes, sir.

Q What is the Guild that is concerned with the writers and directors?

A Screen Writers Guild and Directors Guild of America, and then there is the music, the AFM Guild, American Federation of Musicians.

Q Directing your attention to AFTRA first, Mr. Hayes, do you know what the event is which triggers the obligation to pay a residual?

A No, sir. To my own knowledge I do not.

Q Do you know what period of time is provided in which a residual is supposed to be paid after the event which triggers the obligation to pay occurs?

A No, sir. To my own knowledge I do not.

Q Let's turn to the writers and directors, Mr. Hayes.

THE COURT: May I shorten it? Is your answer the same with respect to their contract?

THE WITNESS: Yes, sir.

THE COURT: Very well. We may go to the next question.

Q Without going over all the conversations with Mr.Block, did you ever call to MR. Block's attention any problem other than this problem of information flow having to do with residuals that you have covered in your direct?

A Well, I think I testified to two problems, the residuals and the reporting information on deals. In other words, you may recall at the Brown Derby we requested that Mr. Block clear deals with us and again Mr. Block said that is impractical, impractical, and therefore, we will consult with you on major or substantial deals, but we can't do it day by day.

Mr. Yorkin was supposed to be the one to have that communication with Mr. Block or his designated representative. Mr. Yorkin said to me he was not getting that. That is all I know.

Q All right. The two points that you took up, then, was with Mr. Block were, the quarrel you had as to whether or not consultation was working to your liking and the other

problem had to do with information necessary for residuals, and those are the two things?

A Generally, yes, sir.

THE COURT: Was there any question of the withholding of money that should have been paid on time or something of that kind?

THE WITNESS: Well, that was part of the residual problem. In other words, the reports on sales and the advancement of money for residuals is all part of that same problem, because the two things generally are remitted together.

Q Now, you say, in response to the court's question, that there was also a problem having to do with whether Viacom was making money payments to Tandem in connection with these residuals.

A Well, the part of the deal as I understand it is that Viacom is to advance the money for the payment of residuals.

Q Was there any occasion on which Tandem failed to advance the residuals in accordance with this understanding you have described?

A Tandem?

Q Pardon me, Viacom.

MR. GOULD: You mis-spoke.

A In answer to your question, MR. Pearsall, it was reported to me thereware occasions. To my own knowledge I do not have that information.

Q In other words, to short circuit all this, if I were to interrogate you as to specifics and ask you if you can point to any example of this, you wouldn't be able to give any of that kind of information to me, would you?

A No, sir. I am not your best witness on that.

Q And now, Mr. Hayes, are you an officer of Tandem?

A Yes, sir.

Q And how long have you been an officer of Tandem?

A Approximately 7 years.

Q And what is your position?

A Secretary.

Q And treasurer?

A Yes, I think I am treasurer, too. I am not sure I am now.

Q Well, you testified in your deposition you were.

A Well, maybe I am. I really don't know. But I know I am secretary.

Q And in fact, you have until January 1962, for some six years prior to that, acted as the business manager for Tandem, did you not?

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A Yes, sir.

MR. GOULD: You mean '72.

MR. PEARSALL: '72.

THE WITNESS: Yes, sir, that is correct.

MR. PEARSALL: What did I say?

MR. PARVER: '62.

MR. PEARSALL: I will give that question again so I am sure we have our record correct.

Q You acted as business manager for Tandem for seven or eight years prior to January 1972, isn't that correct?

A Yes, sir.

Q And during the period, '69, '70, right up to the present time, you have been a director of Tandem, have you not?

A Yes, sir.

THE COURT: I wonder if I could interpose for a minute, Mr. Pearsall?

I started to ask you this on your direct examination. I gather you had no written contract with Viacom ever with respect to when monies or revenues derived were to be sent to Tandem, is that correct?

THE WITNESS: I honestly don't know the answer to that question, your Honor, because the contractual matter, between Tandem and Viacom were handled by Mr. Perlberger.

THE COURT: But as a business manager, don't you know what obligations are assumed toward your company?

THE WITNESS: Well, Mr. Perlberger gives our accounting department that information and, unfortunately, I don't day by day supervise that, and so I honestly don't know.

THE COURT: Well, I wanted to ask you -- if there is an objection to this, Mr. Gould, you may object -- in lieu of a contract, is there a custom with respect to foreign distribution as to the time periods and the conditions under which the distributor remits to the licensor?

THE WITNESS: Yes, sir. Generally speaking, whatever the terms are of the particular Guild collective bargaining agreements, the provision that triggers the obligation is the time when the distributor remits to the producer in advance a statement showing what has been done and remits sufficient funds for the producer to pay to the artist.

THE COURT: I am not talking about the residuals now. I am talking about the relationship between the distributor and the foreign territory --

THE WITNESS: Oh,

THE COURT: -- and the copyright owner or the licensor.

THE WITNESS: Yes, sir. Generally contracts

for accounting either on a quarterly, semi-annual or annual basis. Generally it is quarterly.

THE COURT: And I am asking you -- well, would you say there is a custom as between quarterly, semi-annually or annually in the absence of agreement?

THE WITNESS: Yes, I would say the general custom would be quarterly.

THE COURT: All right.

Now, did you have any specific complaint against Viacom for failing to report revenues received on a quarterly basis?

THE WITNESS: Mr. Nichol, the head of our accounting department, reported that he was not receiving it in that manner.

THE COURT: To you it is hearsay at the moment.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Mr. Hayes, prior to or through December 1971, Tandem was receiving its reports with respect to All In The Family from CBS, was it not?

A I think so, Mr. Pearsall, but again, those do not come to me. I have relatively large company and they would go into the production accounting, and I would not see them or handle them, but I think --

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Q But it is your understanding, is it not, that Viacom did not assume this reporting obligation until December of 1971?

A That Viacom didn't.

Q That's correct.

A You mean as differentiate between CBS's syndicating arm?

Q CBS is the television network with which Tandem had a contractual relationship with respect to All In The Family, isn't that correct?

A Right.

Q And it was in the CBS agreement, paragraph 12, thereof, that the syndication rights or the rights to distribute were provided to CBS, isn't that so?

A I think that's correct. I don't recall the --

Q And, in fact, CBS is the one who reported to Tandem right up through the end of 1971, isn't that correct?

A I know that may sound funny, but I honestly don't know.

Q All right, you don't know.

A Okay.

MR. PEARSALL: I have no further questions.

THE COURT: Mr. Gould.

TRIAL, SEPTEMBER 20, 1973

(Transcirpt, pages 554-559)

MR. PEARSALL: The plaintiffs call Mr.Pisana.

F R A N K P I S A N A, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARSALL:

Q Mr. Pisana, by whom are you employed?

A By the U. S. Court of Appeals.

Q In what capacity?

A Deputy Clerk.

Q How long have you been so employed by the United States Court of Appeals?

THE COURT: What difference does it make?

MR. PEARSALL: I want to make sure, your Honor, that the record establishes --

THE COURT: You can lead him on that. Ask him, Were you at such and such a time.

MR. GOULD: I concede all of that, that he was there, that he is there, that the records are in his custody.

THE COURT: Yes. Get to the point.

Q I show you Plaintiffs' Exhibit 583 for identification and ask whether you can tell us what that is.

A That is the Court of Appeals docket sheet for the case Mt. Mansfield.

MR. PEARSALL: Plaintiffs offer Exhibit 583 in

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evidence.

MR. GOULD: No objection.

THE COURT: Will he need that, or do you want me to see it?

MR. PEARSALL: He won't need it.

(Plaintiffs' Exhibit 583 received in evidence.)

Q Mr. Pisana, I show you Plaintiffs' Exhibits 584, 585, and 586 for identification, and ask if you can identify those.

A These are all orders on the financial state I was given on October 19 in that case.

Q October 19 of what year?

A '70.

MR. PEARSALL: Plaintiff offers Exhibits 584 through 586 in evidence.

THE COURT: What are they, orders by the Court of Appeals?

MR. PEARSALL: They are orders by the Court of Appeals in the Mt. Mansfield case on October 19, 1970.

MR. GOULD: There is no objection to 586, 585, 584.

(Plaintiffs' Exhibits 534, 585 and 586 received in evidence.)

Q Mr. Pisana, what was your connection with the

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Mt. Mansfield against SEC case? 556

A At that time that was assigned to me to take care of all the papers in it, since there were so many litigants in and all the amicus curiae coming in; just to keep everything in order and straight, I took care of the whole case.

Q And you were with the case from beginning to end?

A Yes.

Q You have the docket entries in front of you. Would you refer to the docket entry for January 19, 1971, which reads, quote: "File order granting stay until thirty days after issuance of mandate"?

A Right.

Q Do you see that entry?

A Yes.

Q Have you had occasion and has the clerk's office had occasion to look for the order which is referred to in that docket?

A Yes, we have.

Q Were you able to find it?

A At this time, no.

THE COURT: Which order is that?

MR. PEARSALL: This is the one that is referred to for January 19, 1971. It reads: "File order granting stay until thirty days after issuance of mandate." That is

not one of the orders that you have before you. It is a docket entry.

THE COURT: Yes, I see it.

Q Were you in the courtroom, Mr. Pisana, on January 19, 1971, on the occasion of the Mt. Mansfield appeal argument?

A Yes, sir, I was.

Q Were you there in your official capacity as the deputy clerk?

A Yes, sir, I was.

Q Was there an event at the conclusion of that argument pertaining to the docket entry that I have had reference to?

A On that day one of the attorneys -- I am not sure; I think it was Cutler -- asked for a continuance of the stay that was in effect on October 19.

Q What did the Court do?

A Granted the stay after issuance of the mandate, thirty days after issuance of the mandate.

THE COURT: Say that louder.

A They granted a stay thirty days after issuance of the mandate, continued it.

Q They continued the stay?

A Right.

Q Until thirty days after the issuance of the mandate?

A Yes.

Q Did you make a note about it at that time?

A Yes, I did.

Q Was the stay that was continued by the Judge the stay that had been granted by the Court of Appeals on October 19, 1970?

A Yes, it was.

Q Yes?

A Yes.

Q You made a note of that order by the Court?

A Yes, I did.

Q Then what did you do?

A At that point I gave it to the docket clerk, who made the entry on the docket sheet.

MR. PEARSALL: I have no further questions of this witness.

BY THE COURT:

Q When was the mandate actually issued? Was that June 23, '71?

A June 23 it was issued.

CROSS-EXAMINATION

BY MR. GOULD:

Q Do we understand, Mr. Pisana, then, there was a stay issued in October 1970, was there?

A Yes, there was.

Q And the same stay was continued --

A Right.

Q -- right through until the mandate issued on June 23, 1971?

A '71, right.

THE COURT: And thirty days thereafter.

Q And thirty days thereafter brings us to, let's say, July 23, 1971?

A June 23.

Q No, thirty days after.

A July 23, yes.

Q It is the same stay?

A Yes.

MR. GOULD: I have no other questions.

MR. PEARSALL: No further questions.

(Witness excused)

TRIAL, SEPTEMBER 20, 1973

(Transcript, pages 560-623)

MR. GOULD: Do you have something you want to do first?

MR. PEARSALL: My suggestion would be that unless your HOnor would prefer some other order of proof, that we dfer the technical business of putting in our documents and allow Mr. Perlberg to go forward without further delay.

THE COURT: That is what I was going to suggest.

MR. GOULD: Thatis what I would prefer, because we do want to get him out.

M A R T I N P E R L B E R G E R , called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOULD:

Q Mr. Perlberger, would you describe what your occupation is very briefly and what your connection is with the defendant Tandem in this case?

A. I am a lawyer in the law firm of Kaplan, Livingston, Goodwin, Berkowitz, & Selvin in Beverly Hills, California, and my firm is counsel for the defendant Tandem Productions, Inc.

Q have you personally worked for Tandem on their matters in the last three or four years?

A. Yes, I have.

Q. Are you the person in the firm who deals mostly with the contracts, contract problems or contract business of Tandem?

A. Yes, sir.

Q. Did the time come, sir, when you had something to do with the relationship of Tandem and CBS on theprogram All In The Family?

A. Yes, sir.

Q. When was that?

A. During the month of June of 1970.

Q. What was your task at that time?

A. To advise the client with respect to legal or possible contractual aspects of the client's negotiations with CBs.

Q. Did you take any personal part in the negotiations in June of 1970?

A. No, I did not.

Q. How about July 1970?

A. No, I did not.

Q. When for the first time did you personally act with respect to any of the negotiations or relationships between TAndem and CBS on All In The Family?

A. On April 1, 1971.

Q What was the occasion?

A A telephone conversation that I had with Miss Anne Nelson of CBS.

Q Would you describe that conversation?

A I reviewed with Mrs. Nelson in a telephone conversation --

Q Mr. Perlberger, try to tell us as much as you can what you said and what she said without these generalizations, if you can.

A All right. I said to Miss Nelson that there were a number of changes required in the still pending draft of the memorandum agreement.

Miss Nelson said, "Fine, this matter has just been turned over to us here on the coast from the New York business affairs department where it had been until that time, and I was expecting to hear your comments."

And I then went down the list of comments which I frankly don't remember without referring to some sort of writing.

Q Before we get to that, let me interrupt you a second. Had you seen a copy of Plaintiff's Exhibit 12?

MR. GOULD: That, your Honor, is the September 25 communication which enclosed a draft of the memorandum of

agreement. As far as I can recall that was the earliest draft, th first draft.

A. Yes, I have.

Q. When did you get a copy of that?

A. I got a copy of that within a week after it was sent out by -- the date on the transmittal letter, somewhere around the end of September or beginning of October.

Q. So you ahd that?

A. I had that, yes.

Q. Then I would like to show you Exhibit 16, Plaintiff's Exhibit 16 in evidence here. Had you gotten a copy of that?

A. Yes.

Q. And Exhibit 18. Did that come to you as well?

A. Yes, it did.

THE COURT: You remember I asked you a favor, and you forgot to give it to me. When you mention numbers, give me a date so I can follow it a little bit.

MR. GOULD: I am sorry, yes. I will do that. I omitted it on the other.

16 is letter of October 6, 1970 from Hayes to Sheldon Perry. 12 I think I have identified. 18 is a letter from CBs Television Netowrk dated October 20 addressed by Mr. Perry to Mr. Hayes.

Q. You did get a copy of that one too, did you not?

A. Yes, I did.

Q. When you talked with Miss Nelson, and you fix the date when?

A. My recollection is it was about April 1st, perhaps March 31st, right around that time.

Q. Do we have it clearly then that between September or October of 1970 and April of 1971 you talked with nobody at CBS?

A. That's right.

Q. And your talk with Miss Nelson was your first conversation with anybody there on this subject?

A. Yes.

Q. Go ahead and tell us what the conversation was.

A. I haven't committed to memory the order or the list of the points that I took up with Miss Nelson.

THE COURT: But which document were you addressing yourself to?

THE WITNESS: I was addressing myself to Exhibit 12, the first draft of the contract that was submitted by CBS with a transmittal letter of September 25, 1970.

THE COURT: Exhibit 12.

THE WITNESS: That was the only draft.

THE COURT: Itwas submitted when?

A. September 25, 1970 was the date of the transmittal letter, approximately six months before the conversation.

THE COURT: Seven months, yes. Let me ask you jsut for my own information: What happened to it in six months? Was it in somebody's drawer or what?

THE WITNESS: I beg your pardon?

THE COURT: Where was the paper? Why wasn't anything done about it?

THE WITNESS: During the six months my function consisted of counseling and advising with Tandem and their other advisers, the CBA people in New York and Mr. Hayes' office, and the CMA people in New YOrk had the responsibility of carrying on the contacts with CBS,and apparently they had not gotten into giving CBS specific comments on the paper but confined the activities, as did Mr. Hayes and Mr. Lear, to discussing additional points that hadn't been covered in the earlier negotiation, or suggestions for changes.

THE COURT: When did you get --

MR. PEARSALL: I object and ask that that be stricken, your Honor. That is obviously hearsay, those comments with respect to what CMA was doing. He can't possible know thatof his own personal knowledge.

THE COURT: Strike it out.

What I want to ask you is when did you get that Exhibit 12 for the first time?

THE WITNESS: Around the end of September or the first of October.

THE COURT: You did nothing with it for six months; is that it?

THE WITNESS: No, sir, I communicated with Tandem, and its other advisers onit. I did not communicate directly with CBS.

THE COURT: I see. All right.

MR. GOULD: I have not tried to elicit from him what he said to tandem, of course.

THE COURT: No, I am just trying to explain to myself what the gap was in time.

MR. GOULD: Well, certairly he can't explain it, your Honor.

THE COURT: No.

MR. GOULD: I mean, it was obviously something going on outside of his ken.

THE COURT: Right.

MR. GOULD: And I am not pursuing that.

Q have you told us your whole conversation with Miss Nelson, as you recall it?

THE COURT: He hasn't started yet.

MR. GOULD: I thought not.

A. I can't, without looking at something to refresh my recollection, tell you --

Q. Do you want to look at this?

A. -- the nature of the points that DImade.

THE COURT: What do you want to look at, Mr. Perlberger?

Q. Tell us what you want to look at.

A. Anne Nelson's memorandum to Sheldon Perry is as accurate a listing of the points as I have seen.

MR. GOULD: It is in evidence. It is Exhibit 33, your Honor. It is the memorandum of April 5, 1971, and if there is no objection on the part of counsel, I will place it before him and see if it helps him.

MR. PEARSALL: There is certainly no objection to placing it before him. We don't have an indication that it isin evidence. If it is not in evidence, maybe you want to put it there. Maybe it is in evidence.

MR. GOULD: I think it is.

MR. PEARSALL: We will take your word for that.

MR. GOULD: If it isn't, why it's understood it should be.

THE COURT: If it isn't, it is.

A. I told Miss Nelson that the provision for recoupment of $50,000 production advance was erroneous in that theprovision in the draft provided for recoupment from the first five -- from payments for the first five episodes, whereas/understanding had been that the recoupment would be spread over at least the first ten episodes, preferably, I understood the position of Tandem to be, that the recoupment should be from the last five episodes.

Miss Nelson replied, "Well, I happen to know that recoupment has already been effected sincepayment has been made for thirteen episodes, and I will correct the papers to conform to what happened, namely, it was recouped from the first ten episodes."

MR. PEARSALL: Your Honor, I am going to object to the relevance of this recitation of the discussion with Mrs. Nelson. As the Court will recall, when I attempted to examine Mr. Sipes with respect to this precise same document and this precise same list of events, it was determined that these matters were irrelevant, and that cross examination -- that redirect of Mr. Sipes ceased at that point.

THE COURT: Overruled.

A. Next I told Mrs. Nelson that the contract provided for production to be in California or New York as CBS may elect. I told her that was not in accordance with the

understanding of Tandem that I was aware of, but that production was to be in California.

THE COURT: What did she say?

THE WITNESS: She said she had no information on that, she'd have to check with her people to find if that was correct.

MR. PEARSALL: May I inquire whether the witness is testifying from his own refreshed recollection or whether he is simply reading a document.

THE COURT: You may inquire, yes.

THE WITNESS: It's a mixture of both, Mr. Pearsall.

MR. PEARSALL: To the extent that it's a reading of a document, the document speaks for itself, and I would suggest that the witness confine himself to what in fact is his refreshed recollection.

THE COURT: It's a highly technical objection, Mr. Pearsall. YOu have a document here which purports to come from the other side saying what this witness said. Surely he is entitled to look at it and see what he remembers about what he said, whether he did say it.

MR. PEARSALL: I am sorry, I have no objection to his attempting to refresh his recollection from the document.

THE COURT: It is your privilege to object . but I don't think it's very circumspect in this case. Go ahead.

A. Next, I objected to the provision - in the agreement which gave CBS the right to approve all elements of the program, on the ground that that approval right was too broad, and on the ground that I thought it was too ambiguous. I didn't understand what is meant by the word "elements," but I told her it was my understanding of the negotiations betweeen Tandem and CBS thatCBS would not have any approval rights except certain very specified items, and I told her I knew that Carroll O'Connor and Jean Stapleton, or the roles portrayed by them were to be among the items approved.

Miss Nelson then said, "Well, you know what elements are. It doesn't mean every stagehand and every page of dialogue necessarily or every subsidiary character."

I said, "Well, I don't know that, and I certainly don't think someone reading this contract would know that. I am perfectly willing to not make unnecessary objection to the contract if we can solve this type of problem by the practicalities of the practiceof theparties among the prior 13 episodes, but I certainly want you to at the very least acknowledge that CBS has approved the other continuing players, and that CBS has approved the director, because I understand there is a little argument about the fact that this contract gives CBS that approval right; and I want to make sure," I told Anne Nelson, "that when we sign a piece

of paper that is binding on both sides in a fair manner, and that it isn't a one-way street."

And I told Miss Nelson, "My concern is not with thepractical workings between the parties, whether it be consultation or approval on whatever Tandem wants to use in this show, but my concern is confined as much as possible to the legal effect of the contract, and if we are going to have one where CBS has a number of one-sided outs, I don't think it's fair for Tandem to be committed in writing."

Miss Nelson in reply said, "Well, will it help you if I seek approval of the items taht we all know from a practical viewpoint are in there, such as the two actors who are portraying the young people,and the director, and the fellow who played a black neighbor."

I said, "Well, I don't know but see what you can get for me in this whole area of limiting your approval clause, and maybe preapproving certain items that have already been approved, and I will look at it and then consider it and consult the client."

And Anne said, "Fine, let's do that."

Then I told Miss Nelson I objected to the refernce to the word "stage" or "stager" with respect to Norman Lear. I told her frankly I didn't know what that meant. I thought that it might refer to directing, and if it d d, I

told her that it was obviously inaccurate and should be out.

She said, "Well, what are you worried about? Whatever he's done, he's done a lot more than other people who carry the title producer or head writer, and why not eliminate this objection?"

I said, "Well, again I won't eliminate it because -- for two reasons. I think it's not clear what the term "staging" means. It maymean something that Norman isn't aware of. Or it may mean directing, in which case, by signing this document, he'd be automatically putting his company in breach."

She said, "Well, you may have a point. I willhave to check it with my people. I just got this whole project transferred fromour New York office, and I am really not as familiar as I would have been if I" --

THE COURT: By that time you had a director, John Rich; is that right?

THE WITNESS: That's right. But just to clarify that, Miss Nelson wasn't sure either what staging meant.

In connection with the Norman Lear approval, I also referred Miss Nelson to the understanding that I was aware of among the parties that Mr. Lear could become executive producer after a specified number of episodes and didn't have to reamin producer, entirely apart from the staging problem.

She said she'd have to check that with her people.

In connection with the approval right of Norman Lear in whatever capacities he would be permitted or required to function, I also reqeusted of Mrs. Nelson a provision to the effect that Bud Yorkin, who is the other owner of Tandem Productions, Inc., would be preapproved by CBS as a substitute, and I told Miss Nelson this was not for the purpose of transferring this series into something that Mr. Lear would withdraw from completely, and Mr. YOrkin would take over and break the continuity; but I told her that Mr. Yorkin and Mr. Lear worked very closely on projects even where a project is primarily handled by one of them.

I told her that on some projects they collaborate. Mr. Yorkin, for examin,e may direct and Mr. Lear may produce and write, and on otherprojects they are more or less on their own, but even on those they are very closely related, and I told her I didn't want to jeopardize the company, which is owned by two people, from losing whatever benefits it had from having this agreement with CBS by virtue of Mr. Lear not being able to continue, particularly not if it were for a reason beyond his own making, as long as Mr. Yorkin was able and willing to continue.

Miss Nelson told me that she didn't know about that either, and had to discuss that with CBS, with her superiors or whoever she talked to to get clearance,management.

I told Miss Nelson that there was a paragraph in the contract -- it was number 10 as appears from this memorandum -- I don't recall the number independently -- which proviced -

Q Would it help you if I handed you a copy of the draft you are tlaking about?

A It would help me, yes.

THE COURT: It certainly would.

A Which paragraph provided for CBS to have a right to elect whether to commence the production inbroadcast for mid-season in January 1971 or for the fall of 1971, and what would ahppen depending on what election CBS wouldmake.

I suggested to Miss Nelson that rather than argue about some of theprovisions in the paragraph, we could save ourselves a lot of time by just diminating it because it become moot.

I told her otherwise I'd have some differences with the draft in connection with the requirement to offset against the $100,000 holding payment in that paragraph, 50 percent, up to $50,000 of moneys Mr. Lear would earnelsewhere by virtue of commitments made between November of 1970 and April 1971.

I told her that I would suggest that be liminted only to moneys actually received by Mr. Lear, and not include

commitments that he might havemade for services or moneys 575
to be paid at some other time, but I told her the subject is really moot,"I just don't like to have something unfair in the agreement, but why don't we just see if you can get that eliminated."

She said, "Well, that makes sense. I will have to talk to my management."

THE COURT: Let me ask you as a matter of interest: You didn't make any notes of this conversation ofyour own?

THE WITNESS: I didn, your Honor, because I usually make notes of this kind, and I frequentlymake notes of this kind on a copy of the agreement that I am talking about, and I have beenunable to locate it."

THE COURT: I see.

THE WITNESS: It's either at my filing department or I lost them.

THE COURT: Sometimes it falls into the waste basket by mistake.

THE WITNESS: That's possible, it could be in somebody else's file in my office.

I next mentioned to Mrs. Nelson that I ojbected to the includion of Canada in the broadcast area. I told her

basically I didn't think Canada should be in the broadcast area at all because I thought that it would be only fair , and that the conversations weren't otherwise that the broadcast area should be limited to the usual CBS network territories. I told her taht I had heard that the previous practice of including Canada in a direct network connaction was not being used very much any more in the television business the way it had been in earlier years, and consequently, Canada should be treated like any other foreign area.

M-s. Nelson told me that I was entirely correct about thatpractice, and whether I was or not, CBS certainly wanted to have the right to inter-tie Canada on the network if, for example, they could get one advertiser or sponsor or make some other arrangement where they could do that, and that it was still being done now and then.

I said, "Well, if that's really still the practice, I have no great objection in allowing CBS to do that provided CBS pays for it." I said,"the price has been negotiated according to my understanding on the basis of the United STates and not on the basis of Canada, " and I said, "Customarily, when Canada is included, especially if it's on an optional basis, additional compensation is paid for that." As a matter of fact, I suggested to her I have seen provisions in network contracts providing for an additional seven and a half to ten percent of the United States license

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fee if there is a network extension of CAnada.

She said, "Well, I don't know any of ta that. All I know is that as this draft says, Canada is supposed to be included, and we are not supposed to make any extra payment for it if we include it."

I said, "Well, I wish you would check that with your people and let me know who on behalf of Tandem, if anybody, had agreed to include Canada, because that isn't anything I had ever heard from any of the TAndem people."

She said she'd take that up.

Next I told Mrs. Nelson I objected to some of the provisions of Paragraph 12 beginning with the provision that CBS has all syndication and distribution rights at CBS's standard fees to the extent contractor shall secure same. I am reading from the contract.

I told her I understand that while that was correct as far as it went, I wanted it clearly expressed that we didn't have most of the rights outside the United States and Canada, and some related territories like perhaps Bermuda or Antigua, and that we really didn't know if we could get them because it depended not only on our being able to negotiate with the representatives of the owner of the British series, Johnny Speight, but it also depended on whatever commitments he had made with the BBC.

I told her that we had a hard time getting our documentation cleaned up with the British owner of the rights, and part of the difficulties we were having is finding out whether and to what extent BBC had a restriction on granting the rights to make television shows based on the British series outside the United States and Canada.

That was the reason that was given to me by the British people why they couldn't give the rights to us, but I wanted to satisfy myself to the extent of those restrictions and I just wanted her to make very clear in the contract that we didn't have those rights, and that we may not be able to get them, and I didn't want our client to be in a position to be obligated to get them.

Q Did she respond to your criticism or your suggestion with respect to that paragraph?

A Yes. If I may for a moment, I also told her that whatever rights we were expecting to get, they related only to free television and not pay, cable or -- well, I don't know about cable but not pay television or other types of exploitation that might be included in the term "all syndication and distribution rights," especially I wanted her to be sure that we had no rights to exhibit these television films alone or together in any other way theatrically or in any other medium other than free television, and that we

weren't even going to try to getthose rights because we didn't think we could succeed without paying additional moneys, which we didn't want to pay.

She responded to the effect that she didn't think I told her anything different from what was in this contract, except that she wasn't aware of the nature of the difficulties that we might encouter, and that we might not be prepared to surmount in getting any additional rights, and she thought that she could probably work something out with me on some language to protect Tandem after she checked with her management people.

Next I told Mrs. Nelson that I had been given to understand that an agreement had been made by CBS sometime after production of the series commenced, to pay additional moneys for the cost of adding the socalled black family, actors portraying a character of LIonel and his parents in the series.

I told her that I dodn't know the precise nature of that commitment, and that I thought we might get to a resolution quicker if she could tell me what she knew about it.

She said she didn't know anything about it but would be glad to check with CBs people on what their version was of that, and I told her that meanwhile I will try and get a little more precise information from TAndem as to who said what to whom or what their understanding is as to this

reimbursement obligation.

In any event, I told her there is a reimbursement obligation and it ought to be in the contract if we are going to sign one.

I then told Miss Nelson that I had never heard of the requirement for Tandem to pay the cost or re-editing new programs for the purpose of repeating them, and I asked her if this is something unusual. I just wasn't familiar with what that referred to.

I told her I had not been involved too often in -- as a matter of fact, I had never been involved in negotiating a contract for the production and network broadcasting of a series show which was being produced on tape, as distinguished from being produced on film, and perhaps this had something to do with the customary procedures of handling taped shows which is different from film shows.

I asked her if perhaps it referred to the insertion of commercials or other announcements, which is a provision I had been familiar with in other contracts, and which I was going to talk about if that's what it referred to.

And she said that she wasn't sure either of what that provision referred to, and she would check it out with the management people at CBS and get back to me on it.

I then told Mrs. Nelson that theprovision in

Paragraph 17 for the availability of performing talent for commercials in aprticular had to be eliminated because I told her that not only wasn't that negotiated that I was aware of, but I told her particularly that I had learned from Mr. Lear that he had very definite ideas about the type of show that he was production, and felt that it would be a great detriment to this show even though it was oncommercial television if theprincipal performers were to do commercials or even lead-ins or lead-outs, which is a one-liner in effect connecting the commercial with the entertainment portion of theprogram.

And I told her that she definitely had to tell her people that this was going to be a problem if CBS insisted on this right.

I also told her that I didn't think we were going to be able to persuade the actors involved who portrayed the leading roles to do commercials, because I told her that not onlyMr. Lear but also the actors were extremely concerned about the effect that portraying this type of role could have on them not only as actors but more significantly as members of the community in which they lived, and wanted to be highly regarded.

They were concerned about misinterpretation by members of the public or members of their own circles of the

characters they were portraying, and they certainly didn't want to cheapen whatever their image was by also doing commercials.

She said, "This is all news to me. I'll have to check it out." She said, "You know, we always get this kind of a clause."

I said, "Well, I know this much." I said, "I know you get it, usually when you are not dealing with some established performer who may object to do commercials and whose objection may be recognized and granted. We are not dealing here with performers who have any sort of financial or box office standing on their own, but you've got to treat this on the basis of the type of show it is and on the type of role these actors are performing. And that's just what my instructions are with the client, and please take it up with your people."

She said she would.

Next I took up the exclusivity provisions which appeared in paragraph 18 of this draft, and I had a lengthy conversation with her about the fact that we really shouldn't have any exclusivity other than the fact that this series and these episodes would not be exhibited on television during the time that CBS had the right to exhibit it on their network.

I said, "I also go along with a principle which can be either in this paragraph or another paragraph that the continuing players in the series will not appear in television,

subject to the usual exceptions for guest appearances on television shows while the show is there. But," I said, "in all other media if and to the extent we get any rights or develop any rights based on our own show which may become partially independent from the British rights, and certainly with respect to all the Tandem people, especially Mr. Lear and Mr. Yorkin, if he is going to be involved with this show, and with respect to writers, directors and other people," I said, "there is absolutely no agreement to have them exclusive and I'd likeyou to eliminate that."

She countered by saying, "Well, you know, that's not the way a television business normally operates. We are a business that doesn't cater to the box office. We have to sell to advertisers, and they pay in part for exclusivity, and they want to reduce or minimize the amount of exposure and identification that their advertisements have with other media and other advertisers, and I just don't really want to discuss that in any great extent other than if you have some specific exceptions you want to give me."

She said, "We already discussed and already have in a part of this agreement some limitation on Norman Lear's exclusivity."

I said, "Yes, I know you do, and one of my objections to this clause is that it contradicts the portion of the

agreement in an earlier paragraph that limits or, rather, provides that Mr. Lear is not exclusive."

She said, "Well, let's try and see if we can work something out. I'll talk to my people. Maybe I will also talk to my law department. We will get back to this. Maybe we won't have a problem."

I then told her that paragraph 19 of the draft, which dealt with the unusual nature of the show and its relationship to the normal censorship rights, really, of the network, which they call compliance with standards and practices, was a big problem to me from a legal viewpoint. I said, "I recognized that the facts recited in this paragraph may very well be true, I can't judge them as a lawyer, but, I said, the legal effect of this paragraph means that you can cancel this agreement in the middle of the season any time you want. Because," I said, "I defy anyone to demonstrate or prove legally whether or not the content of any particular show or series of episodes complies with whatever it may be that your standards and practices, your broadcasting standards and practices are.

"Incidentally," I said, "can you please let me have a copy of what you -- I think they call them broadcast standards and practices -- so that at least I can try and arrive at some language that may protect both of us."

She said, "Well, I've never seen them. I don't know if they exist in writing."

I said, "Well, then you prove my point. If they in fact don't exist in writing, how can Tandem sign a contract to comply with something that CBS doesn't even have in writing? It would put CBS in the position of almost arbitrarily canceling its commitment at any time."

I said, "That's not fair, and you can't expect me to do that."

I then started to talk to her about how she could perhaps recognize the basic facts recited in these clauses and the unusual nature of the show by changing the language. And she cut me off and she said, "This language we really can't monkey around with. This came down from Dick Jenks, and I have to get back to my people. But I have very specific and brief instructions on this clause. It's the essential, it's the basic, part of the whole deal of putting the show on the network, and we have just got to have it."

I said, "Well, if you can show me how this does not make the contract a nullity from the viewpoint of legal enforcement, or at least give CBS the almost arbitrary right to nullify its obligations, fine, can you do that?"

She said, "Well, I guess you have a point. I don't know what standards and practices are when you come right

down to it. We just have a department, and they just express their opinion on whether something complies or not, and if it doesn't we try to negotiate with the creative people involved. And we've got to have the final word if those negotiations or subsequent consultations don't result in an agreement on the point."

"So what I will do," she says, "I'll just have to take up this and tell them that you have a very strong objection, and that from a legal viewpoint I don't have an answer for you."

Next I referred to the assignment clause, which is paragraph 20 in the contract, and I told her that the assignment clause appeared to be capable of a broader construction than I thought should be the intent. I told her that I could understand the need of any corporation to assign its important assets and rights. And in the case of CBS, which has activities other than conducting a television business, I could certainly see the need for CBS to be able to assign this contract along with the sale or transfer of its television business, all of its television business. But I could not see Tandem being put in a position of not having any say-so with respect to it. And I also couldn't see CBS being put in a position of assigning this contract to some organization that Tandem might not feel it would

have made this arrangement with.

I told her that this question of who Tandem was dealing with again assumed especial importance in this deal, as distinguished from many other television deals, because of the nature of the show and the very deep commitment and involvement of Mr. Lear and Mr. Yorkin of putting on this kind of a series; that whatever the public may have thought, that they certainly feel they were doing something that was extremely vital to their career,and within the limits of practicality they wanted to have whatever controls they could have in knowing who they dealt with.

Miss Nelsontold me that this was a standard clause that CBS had in all their contracts, and that she had absolutely no authority to change it, but it was something she would have to take up, because she couldn't tell me anything about it other than it was just the normal routine clause in the contract.

I said to her, "Well, Anne, you don't know me and I don't know you very well. I think this is about the first time we have talked as far as I can remember. But I don't know your standards, and if you tell me that Tandem should sign contracts which contain clauses because they are your standards, then I guess I should tell Tandem not to hire me as their lawyer, because that doesn't make any sense. If

you've got a good reason for the clause it's going to be in there, but if it's your standard, then I think you should be able to justify it."

And she said, "Well, as I said before, this is something I'd have to take up with my superiors."

She then again said, "I'm glad we had this extensive conversation. I guess the people in New York," she said, "just never got into this contract before to any extent, or at least I don't know what happened. At any rate, now that we've had the first thirteen episodes under our belt and it looks like we may have something to talk about beyond just this first half season, which was a kind of a test period, I am very glad I had this conversation with you and I am looking forward to our being able to work out this contract quickly and get it signed and get it off our desk."

I said, "I feel the same way, Anne. Thank you very much. I'll wait to hear from you."

That was the end of the conversation.

Q Did you then hear from her?

A I then -- yes, I then heard from her.

Q When was that, sir?

A I don't have any specific recollection of the dates. I had a number of conversations with her, but I don't have any way of pinning down the dates.

Q I would like to show you Exhibit 57, which is in evidence here, and see if that refreshes your recollection with respect to the dates. That is the memorandum, sir, dated June 25, 1971, which is in evidence. Does that help you with respect to the dates?

A Well, I heard from Miss Nelson -- it refreshes my recollection. I received from Miss Nelson a revised draft of this memorandum agreement with a transmittal letter from her dated June 16.

Q That is this document, Exhibit 52 in evidence?

A Yes, that's it.

Q Do you want to keep that in front of you?

A All right. Thank you.

MR. PEARSALL: Mr. Gould, is that document in evidence, 52?

MR. GOULD: I think so. I have it crossed off: June 16, 1971, from CBS Television, signed by Anne Nelson, addressed to Mr. Perlberger.

MR. PEARSALL: Yes. I don't believe that is in evidence.

MR. GOULD: I will offer it now, then. I am sorry.

MR. PEARSALL: May I have a look at it, please.

MR. GOULD: Yes (handing to Mr. Pearsall).

MR. PEARSALL: Your Honor --

MR. GOULD: The record can show that the document I have referred to is Exhibit 52.

(Defendants' Exhibit 710 received in evidence.)

MR. GOULD: 710 is the one that was 52 for identification.

MR. PEARSALL: 52 is now 710?

MR. GOULD: Yes.

Q I interrupted you, Mr. Perlberger. Now would you go ahead, please.

A Yes. I received from Mrs. Nelson a draft -- a redraft of the contract, with her letter of June 16.

Q Did you have a further conversation with her?

A Yes. I spoke to her a couple days after June 16, probably about a day after.

Q Would you tell his Honor what that conversation was. This is a telephone conversation?

A I spoke with her on the telephone, yes. There again I don't have an independent recollection of each point I discussed, but I can refresh my recollection by looking at Miss Nelson's memorandum to Mr. Perry of --

THE COURT: What number is Miss Nelson's memorandum?

MR. PEARSALL: It is 57, your Honor.

THE COURT: Do you have a copy for me?

MR. PEARSALL: Yes (handing to the Court).

THE COURT: Go ahead.

MR. PEARSALL: Is there a pending question?

MR. GOULD: Yes. I asked him to tell us what conversation he had with her after he got that.

MR. PEARSALL: I object, your Honor, on the grounds of the parol evidence rule.

THE COURT: Overruled.

A What I recollect at this point about that conversation is not all of the points mentioned in the memorandum. I believe that her cover letter of June 16 made some reference to the exclusivity provision in paragraph, I believe it was, 19 of the draft contract, and provided that the first thirteen episodes, which had already been delivered to CBS and broadcast on the air, would be acceptable as having complied with the standards and practices requirement, subject to certain provisions -- and without seeing the language I don't have those provisions in mind. And I requested that the provision be deleted, because I still felt that the proviso which dealt with CBS having the right to require a balanced view on both sides of any issue that CBS felt needed it would still be a problem for Tandem, but I told her that it went a long way

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towards solving what I thought was a very difficult problem between the parties. I told her I recognized that CBS had a responsibility to control the programming that went on the air over its stations and that had to be reconciled if possible with Tandem's creative views about what the program should be and what it should not be, and most importantly that that decision should be left as much as possible to Tandem and not with CBS.

But I told her that the proviso about CBS still having the right to require compliance with its standard practices was a problem I would appreciate her helping me out with.

She said that this was something she had very little control over. She again told me that this paragraph 19 language came straight from Mr. Jenks, and there just wasn't anything she could do about it,and wouldn't I please just take my chances and lay off.

I said, "Well, I don't think I can really do that, I don't think I can justify that, but, if you like, I used to know Mr. Jenks when he was out in Los Angeles. I will talk to him and see if I can't get together with him, and told her the difference I had about that with her was not one of substance between the parties as to the unusual and new nature of the show, and the difference isn't that I don't recognize CBS's problems I believe as well as Tandem's

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problems; the difference is that we have to recognize those problems, yet come up with a contract that can be enforced.

I said, "If you sign this kind of a piece of paper," I said, "I am not doing Tandem any services, because CBS just has an additional argument that it can hold Tandem to its obligations, and Tandem has an additional exposure in the event Tandem wants to hold CBS to this contract." Because I felt that CBS still had too much of an arbitrary right to terminate its obligations even with this proviso.

I told her I am not objecting to having her treat this informally in a transmittal letter rather than in the body of the contract, because I felt that her letter on CBS letterhead, while informal, was good enough for me as being legally binding on CBS if a problem arose, but I still would like to try and see if she can't get me some improvement in language.

She said, "No, no, don't call Dick Jenks, don't worry about it. I will just transmit your position. It's going to be a tough problem. But please don't start calling Dick Jenks."

I said, "Fine. I'll wait to hear from you on that point."

Then I told her that the provision that I believe was in her letter, in her transmittal letter, that the changes

in some of the compensation payable based on the March renegotiation between Tandem and CBS should really be spelled out and put down in some kind of a writing more definitely than the way it was explained in the letter.

She said that she thought she could have that taken care of, but she just didn't want to put it in the original contract, she wanted it in a separate piece of paper.

I said, "Well, that's perfectly all right; I just think it ought to be in writing, since we are now into June of '71, we now are preparing for production of the next season on those new prices, and we shouldn't sign one without the other.

I also recollect that I asked her to change the language requiring reimbursement of the cost of the black family so as to not limit it to their compensation but include the cost of the black family.

She told me, "Well, what's the difference? What do you mean by that?"

I said, "Well, you have various fringe benefits, union payments, social security contributions and whatnot, and they should all be included."

She said, "No, that's not what I understand the deal is."

I said, "Well, please check it, because if it wasn't the

the deal, it must have been just omitted in the conversations between whoever had these conversations or may have had with Tandem at CBS, because that is just as much a cost as the salary we have to pay to the actors."

She said, "No, we don't do that, we don't reimburse the fringes."

I said, "Well, please do that, go back, because it is just not right to load that cost on Tandem."

I also told her that the restriction of the black family reimbursement to just the first-half season and the next full season was not something I understood. I said I hadn't heard of any limitation. I said I had heard that that reimbursement was to be made for as long as the black family was in the series.

She said she didn't know about that either, and she would have to check with her people.

We really had the same discussion, I am going through it again, but we had the same discussion about Canada as we had before. She made no change in the Canada provision, and I again said the same thing as I said in April. And she said the same replies. We wound up in the same place, namely, she'd check back with her people.

"And particularly," I said, "after all this time, have you found me anybody who is supposed to have said at any

time to CBS that Canada is included without additional money?"

She said, "Well, I'll check again."

I then told her that I really was surprised because the first sentence of paragraph 12, that first sentence that dealt with merchandising rights, got changed around without any basis at all from the first draft, and I said, "I don't even understand why you did this."

She said, "Well, I don't know what you are talking about. It is the same as it was in the first draft."

I said, "Read it, put them side by side. In the first draft Tandem has the merchandising rights.

THE COURT: Who?

A "Tandem has the merchandising rights in the first draft," and I can't recall whether the difference was that there was supposed to be no deduction or no distribution fee. There was some significant difference in the financial results of the first sentence on paragraph 12 dealing with merchandising results.

She put them side by side, and she said, "Yes, I guess you're right. I'll have our legal department change that back to the way it was in the original."

I then went back to the requirement to have the performing talent do commercials and lead-in's, some lead-out's. And I told her that we were unable to get the

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performing talent to do this, but I said, perhaps we can solve the problem if you will allow us to use our best efforts to get those rights. And I can tell you right now that even though the contract might provide for the best efforts, Anne, I can tell you right now," I told her, "that I have no expectation of those efforts being successful, and I want you to know this. But if this is some sort of a problem for you, I don't think it is important enough to waste a lot more time on. If you can meet me half-way by making it best efforts, I can meet you half-way by making it best efforts. And you and I will just have to remember if it actually comes up that we have absolutely no expectation of this being successful, and we certainly will not offer to pay any money out of our pocket to these actors. And, frankly, you have to recognize that Tandem really doesn't want these actors to be used for commercials anyway."

She said, "Well, I'll see if I can solve it on that basis, to the best of my recollection."

I recall again discussing with her the exclusivity clause, which is in paragraph 18. I don't recall the nature of the discussions about the exclusivity clause, because I don't remember, not having it in front of me, whether she had made changes in this second draft of the exclusivity clause. All I remember is that eventually, before the

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agreement was signed, she made some changes, which we finally accepted as a compromise.

I then talked about the assignment clause, and she told me, "Well, other CBS executives have spoken with Mr. Hayes or perhaps someone else on behalf of Tandem, and why don't you just forget about this assignment clause, Martin, because it's our standard and we have got to have it."

I said, "Anne, we went through this in our prior conversations. It makes no sense for me to justify going along with the clause on that basis. This is still very vital to Tandem. They have only had the first thirteen episodes, which has been a trial. Nobody knows how long this show will stay on the air, but it's very, very important to Tandem that they know who they are dealing with whenever possible." And I told her, "I see no reason why CBS needs any more, or maybe if CBS has any more than what I am suggesting be spelled out, namely, they can only assign this to someone to whom they assign their entire television business and they can only assign the contract as a whole."

She said, "Well, maybe there's another way of solving this problem, because I can tell you we are not going to solve it on this basis. Can you tell me particularly what rights are you concerned about here? Are you concerned about our rights to have this telecast on the ABC or NBC

Network?"

I said, "Well, that's a part of it, but that may not be that practical, and that may be not eliminated by the changes I suggested in your clause."

"So aren't you really just concerned about the syndication, the right to distribute the show on syndication?"

I said, "Well, certainly that is one of my major concerns, because I just found out, although I don't know the details, that CBS has gone out of the business of distributing shows on syndication and distribution. And I have just begun to hear, indirectly mostly, about your having a company called Viacom. Tandem has absolutely no idea who Viacom is. Tandem has no idea on what terms and conditions you would assign these rights to Viacom if you are going to." And I told her that it certainly was a concern of mine that this assignment clause should not permit CBS to assign the distribution rights in syndication to anyone, including Viacom, without Tandem's approval. And I told her that Viacom approval was not likely to be given without Tandem being first aware of the nature of the assignee and the terms of the assignment, and then Tandem would want the right to withhold its approval if it saw fit.

She said, "Well, I'll tell you, Martin, I think that this is the subject, This Viacom, the right to distribute

shows and syndication is the subject of discussions among 600
higher-ups in CBS and other people on behalf of Tandem -- perhaps you are involved in them, perhaps you are not. We are not going to be able to change this clause, Martin, but why don't you try and see if those other discussions result in a solution of the problem."

I said, "Fine, that's fair enough. I'll check back with the other tandem representatives. I just want you to know that at the very least CBS isn't going to have the unrestricted right to transfer and assign its distribution obligations and syndication to the show." I said, "Tandem, when they originally agreed to grant CBS the distribution rights in syndication, had in mind that they were doing this to the same company with whom they made a deal to arrange for the production and telecast of new episodes. And that is a very different situation than having that company just transfer them over to some other company whether or not related to the same network. And furthermore," I said, "I understand from Tandem's representatives that they basically felt that the CBS distribution operation was probably among the better ones in the business and, consequently, Tandem was as likely perhaps to get a fair shake out of that kind of distribution with the CBS operation as it would with anybody else, and why not let CBS earn their distribution

fee.

I said, "Now that there is a clear indication that CBS is in no position to exercise these rights, Tandem has got to have the right, on whatever conditions it deems appropriate, to withhold or grant its approval to a transfer of these rights, and it is just unfair and was never in the contemplation of the parties," I told her, "certainly not in the contemplation of Tandem, that CBS would ever transfer these rights, whether they had a right to or not."

She said, "There's nothing else I can say about this, Martin. It's not really in my hands. Why don't you check and see if these conversations that have been going on or are supposed to be going on between higher-ups in CBS and Tandem people leading perhaps to some solution directly with Viacom will eliminate the problem?"

I said, "That's fine. Thank you very much."

BY THE COURT:

Q Did anybody on your team in Tandem tell you that they were coerced into taking these -- giving to CBS the rights of distribution?

A Yes. Well, by -- they didn't use the word "coerce," your Honor.

Q No, but you just indicated that it might be a very good thing for Tandem to have CBS as the distributor.

Didn't you just finish saying that?

A Yes. I used that as an argument in my conversation with Anne Nelson, trying to persuade her to be my advocate within the councils of CBS to modify this assignment clause. That's right.

Q Isn't that somewhat contrary to the theory that it would not be to the advantage of Tandem to have CBS rather than an independent distributor?

A I don't understand --

MR. GOULD: We certainly don't assert that.

THE COURT: No, let him answer.

MR. GOULD: Excuse me, your Honor.

A I don't understand that being Tandem's theory. I understand Tandem's theory being that the right to determine who is the distributor could be worth a lot of money if you have a successful series. Because people pay money in advance and people negotiate --

Q At the beginning of the contract, Mr. Perlberger, did anybody report to you that either another effort should be made to eliminate CBS as a distributor or do something about it, or that they were unhappy about it?

A The only reason I hesitate replying is because those matters were discussed with me by the Tandem representatives as part of the attorney-client conversations.

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Q Part of what?

A Part of the attorney-client conversations, and --

Q You can claim privilege if you want to. I have no objection to that.

THE COURT: All right, go ahead.

MR. GOULD: I certainly am not objecting to his disclosing it. I don't think Tandem would object to it.

MR. PEARSALL: I most certainly will object, your Honor.

THE WITNESS: It is not my privilege to claim, your Honor.

MR. PEARSALL: If he is not going to, we don't have to get into it, if he is not going to testify to it.

MR. GOULD: It is Tandem's privilege if there is a privilege. It is Tandem's privilege.

THE COURT: It is Tandem's privilege. He is raising a question of relevancy here, I suppose, competence.

MR. GOULD: I am perfectly willing, in behalf of Tandem, to have him respond to your Honor's question.

THE COURT: I know that.

MR. PEARSALL: No, my objection is not one based on relevance, your Honor. My objection is the one that I raised yesterday as to the basic inequity and unfairness of this type of procedure whereby a witness will claim privilege

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in the course of --

THE COURT: Yes, I understand.

MR. PEARSALL: Thank you.

THE COURT: All right, we won't go into it.

BY MR. GOULD:

Q There was, as I understand it, other conversations between you and Mrs. Nelson; is that right?

A Yes.

Q And finally --

BY THE COURT:

Q I still don't understand. How did you resolve on the phone this conversation about the possible assignment to Viacom?

A It was not resolved. Mrs. Nelson told me that CBS insists that they had the right to assign to Viacom. I told her that I disagreed and that Tandem did not concede that CBS had the right to assign to Viacom, and it was left unresolved on the basis that discussions were being initiated between higher-ups at CBS and Tandem representatives, leading perhaps to discussions with Viacom. I told Miss Nelson I was aware of these efforts and that I, at least some of them that I had at that time, been told about the conversations with CBS and some communications directly with Viacom.

I also told Miss Nelson that I wasn't very clear in my mind as to just how independent Viacom was and who was working for Viacom and who was working for CBS. And I told her that I would go along with her suggestion that we leave this in abeyance until we can see whether or not these conversations with CBS and Viacom would result in elimination of the problem.

I told her we wouldn't concede our position. I told her if we could circumvent the problem in some way we would certainly make an effort to do that. And I told her that I had been given the understanding that Tandem, Mr. Hayes particularly, had indicated that he would try and seek an approach to this Viacom problem which would eliminate the difference that I had with Miss Nelson about the assignment clause.

Q What I don't understand is that in the meantime there were some foreign rights which Tandem had, were there not?

A To the best of my recollection, the only foreign right that Tandem had before the middle of June was England.

Q With respect to England, was any hold put on -- Viacom was already an entity on June 25, 1971?

A Yes. It was my understanding, but not firsthand really, that the sale to England was made quite early in

1971, before Viacom existed as a going operation.

MR. GOULD: I think that is in the case, your Honor. I think that is what the proof is up to now.

BY MR. GOULD:

Q Mr. Perlberger, did you get the original of this letter, which is Exhibit 60 for identification, letter dated July 6,1971, from Miss Nelson?

A Yes, I did.

Q And she sent certain new pages to you; right?

A Yes, sir.

MR. GOULD: I offer that in evidence.

MR. PEARSALL: If you wait a minute, I will try to find a copy for you with the pages, Mr. Gould.

MR. GOULD: Thank you. Part of this is missing from my copy, your Honor.

(Papers handed to Mr. Gould by Mr. Pearsall.)

MR. GOULD: I offer in evidence the letter of July 6, 1971, Mrs. Nelson to Mr. Perlberger, enclosing certain pages to be inserted -- her language -- in the agreement.

(Defendants' Exhibit 711 received in evidence.)

Q Mr. Perlberger, following the receipt of this document, Defendants' Exh ibit 711, did you again speak with Mrs. Nelson?

A I don't recall that I did, no. Not immediately thereafter.

THE COURT: The Court will take a five-minute recess at this time.

(Recess)

Q I think I asked you just before we took this break whether yo- heard from Mrs. Nelson after the receipt of the July 6 letter, Defendants' Exhibit 711.

A I next recall receiving a letter about three weeks later, about the 25th or 26th of July, from Mr. Wing, I believe, of the CBS legal department, with a further revised version of the entire agreement and with a proposed draft of an amendatory agreement.

Q That is this paper which is Exhibit 63 in evidence?

A I see it is July 29.

MR. GOULD: July 29, your Honor, from Mrs. Nelson's superior, Mr. Wing, to Perlberger.

THE WITNESS: If I may, he is not her superior. Mrs. Nelson is in the business affairs department; Mr. Wing is in the law department.

MR. GOULD: That was my interpretation. He is the general attorney, so denominated.

Q You have that?

A That's what I got, yes.

Q With the draft attached to it; correct?

A Yes, sir.

Q Sir, what happened after you got the communication of July 29, Exhibit 63, with the new draft?

A The next day I went on a vacation, and I turned the file over to a partner in my office, Mr. Harrison, asking him to bring himself up to date and see whether anything further had to be done. I told him that I had sent these papers to the client, and told officials of the client that I would be out of town for, I believe, two or three weeks, and that if anything had to be done in my absence Mr. Harrison would try to familiarize himself with the file and take care of it.

Q To your knowledge, did Mr. Harrison on August 26, 1971, send certain papers to Mrs. Nelson?

A Yes, he did.

MR. GOULD: Do you have the original of 64A1? I think that is in evidence.

MR. PEARSALL: We have a better copy if that is what you are asking for.

MR. GOULD: Well, there is one here. I was just handed a copy.

MR. PEARSALL: All right.

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A The one in the stipulation is not the same as the one that was sent out by Mr. Harrison on August 26.

MR. PEARSALL: It is not?

THE WITNESS: No. Mr. Harrison sent a draft on August 26.

MR. PEARSALL: We are not talking about the draft. We are talking about the letter.

MR. GOULD: No, no, we are talking about the draft.

Q These are the same, aren't they?

A The transmittal letters are the same, yes.

MR. GOULD: Your Honor, with respect to that, that is the document that has been marked 64A1 for identification. It is a letter of August 26, addressed by Mr. Harrison to Mrs. Nelson, and it is included in the stipulation.

THE COURT: Which stipulation?

MR. GOULD: The stipulation between the parties.

THE COURT: We have exhibit numbers on them. Which one is it?

MR. GOULD: It is Court's Exhibit No. 2.

THE COURT: No. 2.

Q Did you then get back the letter of September 15, 1971, from Mrs. Nelson to you --

MR. GOULD: Which is also included, if your Honor please, in the stipulation, Court's Exhibit No. 2.

MR. PEARSALL: We are perfectly prepared --

A Yes.

MR. PEARSALL: -- to stipulate as we already have to that exchange of correspondence.

MR. GOULD: Yes.

Q Did there come a time, sir, when you received back from Mrs. Nelson executed copies of the final agreement?

A Yes, sir. I received them with her transmittal letter of September 30, 1971.

BY THE COURT:

Q Let me ask you if you know why it was dated as of July 10, 1970.

A I don't know of my own knowledge. I never asked, and it didn't make any difference to me. That was close enough to discussions that must have been taking place in New York.

Q Who suggested that? That was in the original draft?

A It was in the original draft submitted by CBS, which arrived in September or October of 1970, and I never questioned it.

MR. GOULD: It is in every one, your Honor.

THE COURT: It is. I know.

MR. GOULD: Every one of them has that.

THE COURT: I was wondering whether there was any discussion of its legal significance.

Q You say no?

A I never discussed it.

BY MR. GOULD:

Q You got the executed copies back September 30, 1971; correct?

A They may have arrived a day or two later.

Q All right, about then. Sir, did there come a time when you had any --

THE COURT: While the thought is in my mind, I would like to suggest to both counsel that when you are briefing, see if you can brief on what is the legal significance of dating a document "as of." I must admit I have never understood it myself, but there may be some cases on it, I don't know.

MR. GOULD: There are some cases. It is something we have very much in mind.

THE COURT: All right.

MR. GOULD: Excuse me, your Honor, I think I left something out.

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[illegible] COURTHOUSE
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Q Mr. Perlberger, would you please address your attention for a moment back to June of 1971. Did there come a time when you had some conversations with Mr. Block of Viacom?

A Yes. Approximately the middle of June.

Q Did you know Mr. Block?

A I didn't remember him, but he reminded me that we might have known each other in my first year of law school.

Q You mean you and he had been to law school together?

A I have a recollection that he mentioned it to me, but there were 300 people in the class and I didn't remember him.

Q Sir, would you look at Defendants' Exhibit 701, and is that a letter that you got from Block?

A Yes, it is.

Q You had spoken with him the week before you got this letter; correct?

A Yes.

Q What conversation did you have with Block? As much as you can remember about it.

A Mr. Block told me that he was vice-president and general manager of --

Q Excuse me, did you call him or did he call you?

A My not very good recollection is that he called me.

Q Did you expect to hear from him?

A I don't remember that I did, no.

Q Go ahead, tell us what conversation you had.

A Mr. Block told me that he was, I believe it was, vice president and general manager of Viacom Enterprises, and that that was a company that had succeeded to the CBS distribution business and syndication, among other things, and that the subject of the conversation was the All In The Family foreign distribution.

I told Mr. Block that I had just recently learned of the fact that his company apparently had actually gone into business, and that I didn't have any details and was glad to make his acquaintance, and hear from him.

And I don't really remember specific statements as to who said what. All I remember about the conversation is thathe generally asked me for whatever help I could give both his company and Tandem in clarifying whatever problems needed clarification, particularly the rights aspect of the foreign distribution of the All In The Family show.

My recollection is generally that Mr. Block emphasized particularly the problem of not having foreign

territories clearad. I told him, to the best of my recollection, that I am not sure what he meant by clearance, but that the problem which existed I was glad to explain to him in that respect, but before I did that, I think I told Mr. Block that my client had no deal pursuant to which Viacom had any interest in these foreign distribution rights.

THE COURT: Your client had what?

THE WITNESS: Had no deal, had not given the rights to Viacom and had no deal with CBS pursuant to which Viacom could have gotten the rights to distribute the show abroad; and that I really wanted to establish that first, and that I didn't want to get into discussions about the nature of these foreign distribution rights unless it was crystal clear that Tandem hadnot permitted or authorized Viacom to have anything to do with them.

THE COURT: Could I interrupt you for one minute? When you went on vacation, did you leave a vacation memorandum for your partner, Harrison, concerning this matter?

THE WITNESS: No, sir, I had a very brief conversation with him and told him that I hoped there would be very little to do and that matters could wait until I returned.

THE COURT: Did you brief him on the fact that there was a Viacom which had come up and that you had objected to the assignment clause?

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THE WITNESS: I don't have a specific recollection of whether I did or not. In that connection, I did tell Mr. Harrison that Mr. Hayes and Mr. YOrkin were very, very close to negotiations, and that they did know everything that I knew about any substantive problems.

Q Go right ahead.

A Mr. Block suggested in substance that we leave the question of rights aside. He said in substance that it would be to the interest of Tandem certainly to maximize the benefits from foreign distribution of All In The FAmily, and Mr. Block in substance suggested he was confident that any questions I had about the rights would be resolved.

And either he suggested or I suggested and he went along with a discussion about the clearance problem without conceding either side's position with respect to Viacom's right to be involved in the distribution of these programs abroad.

I then did explain to him in some detail thenature of the rights that TAndem acquired, and that TAndem acquired the rights to produce this television series on the basis of an English show, and that our problem was with the English owner the show who had not given us rights exdept on a case by case basis, and the only case up to that time that I recall was England, to sell the show abroad.

I told him that he was right, it was to Tandem's interest to obtain permission to sell thistelevision series abroad, and that we were engaged in continuing efforts to do so, but that we had been engaged in efforts to get a lot of things clarified in document with the owner of the British series, and that history indicated that it could take a long time because it seemed to be very difficult for the poeple we were dealing with to concentrate on paperwork, and on subsidiary things such as the right to sell the series abroad.

It was very difficult toget the British people to pay attention to them and do thenecessary things that they felt they had to do in order to give those rights to us or to obt ain the rights from whoever it is that held the restrictions.

I don't remember if I told Mr. Block at that time or the subsequent time, perhaps never, but I think I told Mr. Block that the problem tha tour British source had was that the BBC had imposed certain restrictions by virtue of exclusive rights to sell the British show in certain countries, and that the British owner felt they would need permision from the BBC based on its exclusive rights in the British Till Death Us Do Part bef ore they could give Tandem the right to sell All In The FAmily in foreign territories.

THE COURT: Let me understand. It may be irrelevant, I don't know, but what was the copyright problem on infringement? YOu had a different show. What was the copyright problme?

THE WITNESS: WE had a contractual problem. We felt that we needed a contractual right from the owners of the British series in order to distribute our All In The Family which was based on the English series wherever we were distributing it, because distributing it we felt --

THE COURT: It was just an idea. What was it based on? Was it based on a topical comedy, situation comedy?

THE WITNESS: The British series consisted of original scripts by this man Johnny Speight, and it was a series that was slimilar in concept to All In The Family in that it had --

THE COURT: Just concept?

THE WITNESS: It had a lower middle class reactionary type father, it had the type of mother that is portrayed by Jean Stapleton. It had a kind of liberal son-in-law and the kind of daughter that is portrayed here.

THE COURT: You think that is subject to copyright?

THE WITNESS: I didn't think it was subject to copyright. However, I felt there was a legal problem because Tandem, before really asking legal advice about it,

had opend up negotiatons with the owner of this British series. and his agent, to obtain theright to do it, and Tandem felt that they wanted to make as much as possible the same kind of series and in fact, they told me -- but this is hearsay, I don't know -- that they really used substantial excerpts of some of the scripts.

There were some twenty or thirty scripts of the British series that were used.

THE COURT: When you say it may be irrelevant -- I don't know -- but I juste was interested. It seemed so far-fetched to me that the British rights could claim infringement against All In The Family.

MR. GOULD: I think the answer is to be found in the adaptation of the scripts.

THE COURT: I think it's a contractual situation in a sense more of honor once they went into it.

MR. GOULD: I don't know.

THE WITNESS: WEll, Tandem certainly agreed not to exploit All In The Family, the , American version, except where the contract with the British author provided for it to be exploited, and it's primarily a contrac tual problem.

THE COURT: It is a negative restriction.

THE WITNESS: That's right. I never focused on the copyright problem because I didn't think it helped Tandem

if we had a contractual restriction.

THE COURT: Yes, all right.

Q Mr. Perlberger, go back to your conversation with Mr. Block. Have you told us all that you can remember without refreshingyour recollection?

A Yes.

Q Take a look at this. This is Exhibit 702 in evidence here, and this is the letter that you wrote Mr. Block on June 18, 1971 after you got his letter, Exhibit 701 of June 15th. Let's see if that refreshes your recollection as to the full conversation.

Did you say to him in your conversation with him prior to June 15th that Viacom in so far as Tandem Productions, Inc. is concerned, is the owner of All In The Family, Viacom has no rights whatsoever in the series, in words or in substance?

A My recollection isn't that good, but I know I said this but I don't believe I said this in the conversation I had in the week before June 15th.

Q Read that paragraph and tell me what your best recollection is.

A My present recollection is that I had a conversation withMr. Block on June 18th or perhaps the day before.

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Q I see.

A In other words, my recollection is that Mr. Block's letter of June 15th was quite upsetting to me, and indicated to me that I'd have to be a lot more blunt, apparently, than I was in my conversation with him to get through to him.

Q So we have it then after you got the letter of June 15, Exhibit 701, you did have another conversation with Mr. Block, correct?

A Mr. Gould, I think so. I don't have a specific recollection of which conversation is which.

Q In some conversation with him between the time you got the letter of June 15th and the time you wrote the letter of June 18th, did you tell him that as far as you were concerned, and TAndem was concerned, Viacom had no rights whatever in the series?

A Yes.

Q Did you also tell him that, as CBS business affairs executives have confirmed to you by telephone, the entire question of the contractual rights and relationships between Tandem and CBS is still the subject of continuing negotiations in various areas including the area of syndication and foreign distribution rights?

MR. PEARSALL: Objection, your Honor. I have no

objection to the statement going in as having been said, but I do object to it for the truth of the statement because it's clearly a hearsay statement at that time.

MR. GOULD: That is all it is offered for, your Honor. Thatis what he said to Block.

MR. PEARSALL: I have no objection if it goes in for that purpose, your HOnor.

THE COURT: You are quite right, Mr. Pearsall. Thatis all it will be received for.

Q Did you tell him that?

A. Yes, I did.

Q In that conversation, did he tell you that he would send you a letter or other appropriate concise written material indicating on what basis his company would be involved or would like to be involved in the foreign distribution of All In The FAmily?

A . Yes, ye did.

Q Did he tell you also that nothing could or would be done by Viacom with respect to All In The Family until after it had been clarified and properly documents?

A Yes, he did.

Q And properly documented and clarified as to whether or not Viacom would be involved with this series, and if so, on what terms and conditions?

A Yes.

Q That is the substance of what he told you.

A Yes, it is.

Q MR. Perlberger, did you ever get anything in writing from him in accordance with that so-called promise of a letter or other written materials?

A What I got is a letter from Mr. Joe Irwin of Viacom at the request of Mr. Block which was dated somewherein the beginning of July, and which included with it a completely inapplicable form which purported to be a form of distribution agreement used by CBS Enterprises for different type of television programs.

Q You mean this paper which is defendant's Exhibit 712, right?

A Yes.

Q That is all you got from him?

A Well, ever --

Q Well, of course. Did you get any other response to your letter of June 18th?

A No. WEll, I got a response in that there were further telephone conversations. I don't recall whether they were with me or with other TAndem representatives, but there were further discussions between Mr. Block, and I don't recall the extent to which those discussions were

participated in by me personally, and the extent to which I was told about them by ohter Tandem representatives.

Q Just tell us your own best recollection to the extent thatyou participated.

Well, I will withdraw that. You can't separate what you heard from Block and what you heard from others; is that right?

A That's right.

MR. BLOCK: I will withdraw that.

I have no further question.

MR. PEARSALL: No questions, your Honor.

THE COURT: You may step down, Mr. Perlberger.

Could I ask one question before you leave? You can stand there for a minute.

Did anybody raise any question at the time of the execution of the contract as to whether or not it was legal under the FCC order, to your knowledge?

THE WITNESS: Not to my knowledge, your Honor.

THE COURT: All right.

(Witness excused.)

THE COURT: All right, what is t next?

MR. PEARSALL: All we have to do is put in our documents. Why don't you take your next witness? We have

TRIAL, SEPTEMBER 20, 1973

(Transcript, pages 648-650)

Mr. Cohn and we will advise your HOnor as promptly as possible.

THE COURT: That is subject to the objections contained in the lines that may be made by the other side.

MR. GOULD: Sure.

THE COURT: Which I haven't ruled on.

MR. GOULD: Now defendant rests subject to these open ends.

THE COURT: Let me state the ground rules then. Mr. Gould willserve and file with the Court by Tuesday, September 25th, his statement of offer of proof with respect to the fifth affirmative defense rdating to the antitrust defense.

That will be treated separately by the Court, so that I will now fix a time for the exchange and filing of briefs on all subjects other than the fifth defense. That will be a month from today, which is October 23rd. That will give your typists a chance.

As a matter of fact, I am probably going to a meeting in San Francisco on the 24th, 25th, and 26th, and there is no use crowding counsel, so make it October 29th then.

Is that agreeable to everybody, October 29th?

MR. PEARSALL: Your Honor, are we going to exchange?

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[illegible] District Courthouse
[illegible] NEW YORK, N.Y. [illegible] TELEPHONE [illegible]

THE COURT: On the other hand, I could take it on the plane and read it, some of it, I suppose. Do you think you will have it ready by then?

MR. GOULD: What I would like to suggest, your Honor, if we have a draft we will give it to your Honor, knowing that you are going away, if we haven't got it ready. I'd like to take advantage of the time.

THE COURT: All right, October 29th at four o'clock.

MR. GOULD: I think you are entitled to some more pleasant reading on the plane.

MR. PEARSALL: There will be, then, a period for each of us to reply to the other?

THE COURT: Yes, I will work something out with you. I would assume normally you figure a week and in a case like this, when you exchange, I will allow each side to reply.

MR. GOULD: Exchange briefs on the 20th?

THE COURT: Yes.

MR. GOULD: And a week for replies.

THE COURT: Yes, the following Monday.

MR. PEARSALL: Yes, that's fine.

THE COURT: All right, now I am going to write this down. One, defendant to tender offer of proof re. antitrust defense by September 25th.

650

Two. Counsel to exchange briefs, excluding antitrust, by October 29th at four o'clock. One week to each side to reply simultaneously.

I generally do not hear oral argument in a situation of this kind, but if I think it becomes important, I may call you. There are going to be so many documents, the main thing I beg of you is not to make me read through all the documents, which I will have to do unless counsel pinpoint what they consider the important documents.

MR. GOULD: That is what we will try to do.

THE COURT: Because you can get lost in a quagmire with so many documents.

MR. GOULD: WE will advise your Honor say by Monday as to what we want to do about Mr. Cohn.

THE COURT: Yes.

MR. GOULD: Very well. Thank you sir.

THE COURT: I will have to squeeze it in, but I will have to do it.

MR. PEARSALL: And we are going to send you a letter as to rebuttal witnesses, as we arranged this morning.

THE COURT: When do you want to do that?

MR. PEARSALL: I want to consider whether we want a rebuttal witness at all.

SOUTHERN DISTRICT REPORTERS
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Offer of Proof Filed by Defendants on or About September 25, 1973 in Support of Affirmative Defense of Antitrust Violation

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 2941 (M.I.G.)

VIACOM INTERNATIONAL INC., *et al.*,

Plaintiff,

against

TANDEM PRODUCTIONS, INC.,

Defendant.

Defendant Tandem Productions, Inc. ("Tandem") offers to prove the following facts in support of the Fifth Defense contained in Tandem's Answer to the Second Amended Complaint herein:

1. Columbia Broadcasting System, Inc. ("CBS") is engaged in, among other things, the ownership and operation of five VHF television stations and in the operation of the CBS television network. CBS is engaged in interstate commerce throughout the United States.

Viacom International Inc. ("Viacom") is engaged in, among other things, the exercise of "syndication rights" to television programs. A "syndication right" is the right to act as syndicating agent, that is, as agent in distributing the television program to stations for non-network exhibition in the United States (the "domestic syndication

right'' or abroad (the ''foreign syndication right''). Viacom is engaged in interstate commerce throughout the United States.

CBS Enterprises, Inc. (''Enterprises'') is a wholly-owned subsidiary of CBS which, until on or about June 4, 1971, was engaged in the exercise of syndication rights of television programs which had initially been broadcast over the CBS television network.

2. The production and acquisition of television programs by the three nationwide commercial television networks (CBS, National Broadcasting Company (''NBC'') and American Broadcasting Company (''ABC'')) involves substantial amounts of interstate commerce. In 1969, the three nationwide commercial television networks spent more than $840 million for television programs, of which CBS spent more than $250 million. In 1969, total television broadcasting revenues for the three nationwide commercial television networks were in excess of $1.51 billion, of which CBS received more than $520 million.

3. The exercise of syndication rights to television programs also generates substantial interstate and foreign commerce. In 1964, the three national commercial television networks received $2.4 million in income from syndication or distribution fees. In 1967, the three nationwide commercial television networks had net gains in the amount of $2,627,000 from syndication fees.

4. Enterprises and Viacom have had gross receipts from the syndication of ALL IN THE FAMILY in the amount of $291,024.42 from the inception of syndication activities through June 30, 1973. Enterprises and Viacom have received distribution fees from the foreign syndication of ALL IN THE FAMILY in the amount of $116,407.77 from the inception of syndication activities through June 30, 1973.

5. CBS, ABC and NBC operate the three national commercial television networks in the United States. Each of the three television networks is composed of five television stations owned by the parent company and located in the areas of greatest population concentration. The five television stations owned by each network can reach about 25% of the nation's television receivers. The five commercial television stations owned by CBS are located in New York City, New York; Los Angeles, California; Chicago, Illinois; Philadelphia, Pennsylvania, and St. Louis, Missouri. These cities ranked first, second, third, fourth, and eleventh, respectively, among the nation's top 50 television markets in 1968.

6. In addition to the five television stations owned by CBS, the CBS television network includes approximately 200 affiliates which serve virtually every community in the country. Each national television network produces or procures programs, arranges for sponsorships, and offers a continuous, coordinated schedule of television programs to its affiliated stations. Although networks may not, under FCC rules, require a station to carry any program, an affiliate has first call in its community on all of the networks' programs. The network acts as sales agent for its affiliates and compensates them for carrying programs. In addition, the network supplies "sustaining" programs to the affiliates, and arranges for the interconnection of the affiliate with the network and the delivery of the program material. As of December 31, 1969, the top fifty television markets (which include about 75% of the potential television audience) had 224 operating television stations. Of these, 153 were network affiliates. The United States as a whole had 621 stations, of which 499 were network affiliates. Only 14 of the top 50 markets had one or more independent VHF stations as of December 31, 1969.

Offer of Proof

7. The most desirable time for broadcasting television entertainment programs is the period between 6:00 and 11:00 p.m. and these hours are referred to as "prime time." During these hours, television programs can obtain the most viewers, television networks and television stations can obtain the most money for advertising time, and television producers can obtain the highest prices for programs.

8. By 1964, because of the increasing costs of program production, the growing availability in the syndication market of "off-network" programs (programs sold for broadcast on individual television stations after having been carried on one of the three major television networks), the increased availability of feature films for the syndication market, and the decline of advertiser-supplied programs in syndication, prime time network television had become virtually the only economically profitable or practical market for television adventure, drama and comedy entertainment program.

9. Although it was possible to sell such adventure, drama and comedy entertainment programs directly in syndication, by 1964 it appeared that the maximum possible revenue which a syndicator could obtain from a first-run program was approximately $50,000. To achieve this maximum, a syndicator would have to have sold the program in virtually all of the top 100 television markets. By 1964, the average production cost of a prime time adventure, drama, or comedy program had increased to approximately $50,000. The increase in production cost, by 1964, had largely priced these adventure, drama and comedy programs out of the syndication market.

10. Buying power with respect to television entertainment programs is concentrated in three companies, and the

same three companies control access to prime time network television.

11. The networks do not produce or create the vast majority of programs shown on their national television networks. The bulk of television programs are produced by independent producers and then sold to one of the three national networks for exhibition. Television programs produced by the networks comprised 29.5% of the prime time television schedule in 1957, and 19.8% of the total prime time schedule in 1964. The percentage of programs produced by independents and licensed to the networks for exhibition increased from 36.4% in 1957 to 72.8% in 1964. The percentage of entertainment programs produced by the three networks fell from 23.9% in 1957 to 9.1% in 1964, while the percentage of prime time entertainment programs produced by independents increased to 82.5% in 1964.

12. Although networks produced only 19.8% of all prime time network programs in 1964, they received interests in the syndication and other subsidiary rights in 75.7% of all programs exhibited on the networks during that year. During the five-year period ending in 1964, the networks accepted virtually no entertainment program for network exhibition in which they did not have financial interests in syndication and other subsequent use. Between 1964 and 1969, there was a decrease in network acquisition of syndication rights, and a slight decrease in network acquisition of profit shares in syndication, but the practice of network acquisition of these rights continued. Between 1957 and 1967, the percentage of packager-licensed program hours in which networks acquired domestic distribution rights increased from 15.9% to 23.8%, and the percentage of such hours in which networks acquired foreign distribution rights increased from 23% to 24.4%. Total hours of

packager-licensed programs in which networks obtained domestic syndication rights more than tripled between 1957 and 1967, and the total hours in which the networks obtained foreign syndication rights more than doubled. Domestic profit shares increased from 31.9% in 1957 to 65.4% in 1967; foreign profit shares increased from 33.6% in 1957 to 66.9% in 1967.

13. In 1968, CBS produced 17.8% of all prime time programs carried on the CBS television network, but participated in the syndication and other subsidiary rights to 79.5% of the prime time programs carried on the CBS television network during that year.

14. During the negotiations between Tandem and CBS leading to CBS' acquisition of ALL IN THE FAMILY for network broadcast, the representatives of Tandem attempted on a number of occasions to negotiate an agreement with CBS which would permit Tandem to retain the syndication rights to ALL IN THE FAMILY. CBS refused to permit Tandem to retain the syndication rights, and on various occasions, stated that ALL IN THE FAMILY was a controversial program and that, for that reason, Tandem did not have sufficient bargaining power to obtain CBS' agreement to permit Tandem to retain the syndication rights. CBS did not offer to pay any additional license fees or other compensation to Tandem in exchange for its agreement to grant CBS the syndication rights to ALL IN THE FAMILY. Even after it was suggested to CBS that, by reason of FCC regulations promulgated during 1970, CBS had no interest in obtaining syndication rights, CBS refused to reconsider its position or to permit Tandem to retain the syndication rights.

15. During the negotiations between Tandem and CBS, CBS knew that Tandem had attempted to sell ALL IN THE

FAMILY to ABC and that ABC had failed to exercise its option to purchase the program. CBS also knew that NBC had turned down the program.

16. There are other companies which engage in syndication and distribution activities in addition to Viacom and other network-formed companies. There is competition among these companies for syndication rights, and producers can sell syndication rights to these companies for valuable consideration. In addition, producers can bargain with these companies for better terms and conditions than those imposed on Tandem by CBS in connection with the syndication of ALL IN THE FAMILY, including lower syndication fees, guarantees, and other benefits.

17. By reason of CBS' refusal to give Tandem access to the CBS television network and to purchase ALL IN THE FAMILY for network exhibition except on terms which included the grant of syndication rights to CBS, Tandem was prevented and is being prevented from selling or disposing of the syndication rights to ALL IN THE FAMILY in the syndication rights market and from making arrangements to have one of the other companies syndicate ALL IN THE FAMILY on terms more favorable than those imposed on Tandem by CBS.

18. By forcing Tandem to grant the syndication rights in ALL IN THE FAMILY to it, CBS restrained trade and commerce in such rights.

19. The restraint of trade imposed on Tandem by CBS continues despite the fact that the FCC, because of the anticompetitive effects of agreements such as the CBS-Tandem agreement, has now prohibited the television networks from acquiring any syndication rights in television pro-

grams of which they are not themselves the sole producers. The enforcement of the CBS-Tandem agreement by this Court will continue the restraint of trade resulting from it because it will prevent Tandem from selling or disposing of the syndication right to ALL IN THE FAMILY in the syndication rights market and from making arrangements to have some company other than Viacom syndicate ALL IN THE FAMILY on terms more favorable than those imposed on Tandem by CBS.

20. By Report and Order dated May 7, 1970, the Federal Communications Commission, after extensive hearings and consideration, promulgated the following Rule:

> "After September 1, 1971, no TV network may sell, license, or distribute TV programs to TV licensees within the United States for non-network TV exhibition or otherwise engage in 'syndication'; or sell, license, or distribute TV programs of which it is not the sole producer for exhibition outside the United States; or reserve any option or right to share in revenues or profits in connection with such domestic and/or foreign sale, license, or distribution; or, after September 1, 1970, acquire any financial or proprietary right or interest in the exhibition, distribution, or other commercial use of any TV program produced in whole or in part by a person other than such TV network, with certain exceptions and provisos. Educational networks are excluded. Prime Time Rule, 18 RR 2d 1825 [1970]."

21. In connection with its adoption of the foregoing Rule, the FCC found:

> "[A]lthough in many cases packagers do not recover production costs from the network run of a program

series, but must look to profits from domestic syndication, foreign sales and other subsidiary uses of the series to recover their costs and make a profit, they almost uniformly 'bargain' away substantial portions of domestic and foreign syndication rights." 18RR2d 1833 (May 7, 1970)

22. The FCC further found:

"Under present conditions independent producers who desire to exhibit their product first on a network and then offer it in domestic syndication and foreign markets must first bargain with the networks who are their principal competitors in syndication and foreign sales for the network exposure necessary to establish the subsequent value of their programs as valuable commercial assets in domestic syndication and foreign sales, and are usually required to grant to the networks either the distribution rights or large shares in the profits from domestic syndication and foreign distribution, or both, for the program. Similarly, a producer who seeks to distribute his programs in foreign countries must compete with networks who through the bargaining with the same and other independent producers control the source of supply of the programs which constitute the staples of this market and/or they share in the profits from such distribution by others. The record has convinced us that networks have a clear conflict of interest in choosing programs for their schedules. Indeed, as stated, we believe on the basis of the record before us that networks do not normally accept new, untried packager-licensed programs for network exhibition unless the producer/packager is willing to cede a large part of the valuable rights and interests in subsidiary rights to the program to the network." 18 RR2d at 1846

Offer of Proof

23. The FCC made further findings and reached further conclusions in its Report and Order dated May 7, 1970, supra, and in its Report and Order denying reconsideration of the Rule, 25 FCC 2d 318, 19 RR 2d 1869. Both Reports and Orders are incorporated herein by reference as though fully set forth.

24. From the Reports and Orders cited above, and from other evidence to be offered at trial, it is clear that the FCC Rule, as the FCC itself stated,

> "was designed to remove any network incentive to choose for network exhibition those programs in which they had acquired syndication rights, and to enable independent producers to become more competitive and independent sources of television programming. *It was also concluded that the prohibition of domestic syndication by the networks would make for fairer competition,* in light of the networks' continuing and close relationship with the affiliates to which they and other syndicators seek to sell programs." In re Motion of Columbia Pictures Industries, F.C.C. 2d [21RR2d 1313, 1314] (emphasis supplied)

Dated: New York, New York
September 25, 1973

SHEA GOULD CLIMENKO & KRAMER

By s/ MILTON S. GOULD

A Member of the Firm
Attorneys for Defendant Tandem Productions, Inc.
330 Madison Avenue
New York, New York 10017
(212) 661-3200

Plaintiffs' Objection to Offer of Proof Submitted by Defendant in Support of Its Fifth Defense

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 2941 (M.I.G.)

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that plaintiffs object to the introduction into evidence in this action of the alleged facts in support of the Fifth Defense described in defendant's "Offer of Proof" dated September 25, 1973 on the grounds that the Fifth Defense is insufficient and should be dismissed for the reasons set forth in plaintiffs' pending motion pursuant to Fed. R. Civ. P. 12(c), 12(f), 12(h)2 and 56. Accordingly the proof thus offered by defendant is irrelevant.

Dated: New York, New York
September 28, 1973

Yours, etc.,

HUGHES HUBBARD & REED
Attorneys for Plaintiffs
One Wall Street
New York, New York 10005
212 WH 3-6500

To:

SHEA, GOULD, CLIMENKO & KRAMER
Attorneys for Defendant
Tandem Productions, Inc.
330 Madison Avenue
New York, New York 10017

Statement Pursuant to Rule 9(g)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 2941 (M.I.G.)

[SAME TITLE]

Defendant Tandem Productions, Inc., ("Tandem") alleges that plaintiff's motion to strike Tandem's Fifth Defense raises questions of fact to be tried herein with respect to the following issues:

(1) Whether Tandem received any benefits from CBS attributable to its alleged grant of syndication rights to CBS.

(2) Whether CBS Enterprises or Viacom have performed any services or rendered any benefits to Tandem for which they have not received full payment.

(3) Whether, and the extent to which, the distributions allegedly paid to Tandem by Viacom and CBS Enterprises represented benefits to Tandem or merely reimbursement for residual obligations incurred by Tandem as a result of the activities of Viacom and CBS Enterprises.

Dated: New York, New York
September 19, 1973

SHEA GOULD CLIMENKO & KRAMER

By s/MSG

(A Member of the Firm)
Attorneys for Tandem Productions, Inc.
330 Madison Avenue
New York, N.Y. 10017
Tel: 661-3200

Order Filed October 9, 1973 Directing That Judgment Be Entered Dismissing Action as to CBS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 2941 (M.I.G.)

[SAME TITLE]

Upon the application of Columbia Broadcasting System, Inc. ("CBS"), the Court having determined pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay in entry of final judgment as to CBS, it is

ORDERED that in accordance with the order entered herein dated September 17, 1973, judgment is directed to be entered dismissing this action and the Second Amended Complaint as to CBS, and the caption of this action shall thereupon be deemed amended by dropping CBS as a party.

Dated: New York, New York
October 9, 1973

M. I. Gurfein
U.S.D.J.

Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

An order, a copy of which is attached hereto and incorporated herein, having been entered herein dated Septempber 17, 1973, and filed on September 18, 1973, dismissing Columbia Broadcasting System, Inc. ("CBS"), as a party to this action and making certain other provisions, and by further order entered herein dated September , 1973, the Court having determined that there is no just reason for delay in entry of final judgment in favor of CBS and having directed the entry of such judgment, it is

ADJUDGED that pursuant to and in accordance with paragraphs (1), (2) and (4) of said order of September 17, 1973, the action, the Second Amended Complaint and each of the claims asserted therein are dismissed as to CBS on the merits and with prejudice.

Dated: New York, New York
October 9, 1973

Approved:

s/ M.I.G.
U.S.D.J.

Judgment entered
October 11, 1973

Order

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

It appearing from the Second Amended Complaint, the Answer of Tandem Productions, Inc. ("Tandem"), and all other pleadings and proceedings had herein that plaintiffs and defendant Tandem have adverse claims with respect to certain property, described below, which is now or hereafter will be in the possession, custody, or control of Columbia Broadcasting System, Inc. ("CBS"); CBS having represented to this Court that it has no interest in such property and prayed that the Court order plaintiffs and defendant to interplead their respective claims with respect to such property; and this Court having found that CBS is a stake holder with respect to such property,

IT IS HEREBY ORDERED THAT

(1) CBS shall hold all such property, tangible or intangible ("the Property"), as it now has or may hereafter acquire, with respect to each episode of the television program ALL IN THE FAMILY, as is necessary to engage in the foreign syndication of that program and in the domestic syndication of that program after the completion of all network broadcasts, including

(a) a color video tape,

(b) a copy of the script, and

(c) a copy of the music cue sheet,

subject to further order of the Court in this action directing CBS to deliver the Property to a party herein for foreign syndication or for domestic syndication after the completion of all network runs; and CBS agrees that it has no interest in the property which is the subject matter;

(2) CBS is dismissed as a party to this action;

(3) Plaintiffs and defendant Tandem shall within days hereof interplead their respective claims with respect to the Property; plaintiffs' Amended Complaint may be deemed their interpleader complaint if they so elect; and

(4) Neither planitiffs nor defendant Tandem shall commence any other action or assert any claim against CBS with respect to the custody, control or disposition of the Property.

Dated: New York, New York
Sept. 17, 1973

M. I. Gurfein
U.S.D.J.

A True Copy
Raymond F. Burghardt, Clerk

By B. Edwards
Deputy Clerk

Defendant's Notice of Motion Dated October 29, 1973 to Strike Certain Trial Exhibits Offered in Evidence by Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the stenographer's minutes of the trial herein, the pleadings and all prior proceedings heretofore had herein, defendant will move this Court by submission of this Notice to Hon. Murray I. Gurfein on November 8, 1973 to strike the following exhibits offered in evidence by plaintiffs on the trial herein upon the grounds set forth below:

Offered at Page	*Document*	*Ground of Objection*
626	Plaintiffs' Exhibit 24, Page 48 of the 1/31/71 issue of Variety	Hearsay, Relevance
626	Plaintiffs' Exhibit 146, T.V. Guide Article dated 5/29/71	Hearsay, Relevance
626	Plaintiffs' Exhibit 571, Newsweek Article dated 3/15/71	Hearsay, Relevance
238	Reviews attached to Plaintiffs' Exhibits 431, 433, 434, 465	Hearsay, Relevance

Defendant's Notice of Motion

Offered at Page	*Document*	*Ground of Objection*
213	Plaintiffs' Exhibit 410, Syndication Agreement between CBS and Viacom	Relevance, not binding on Tandem
238	Plaintiffs' Exhibit 439, Memorandum, with attached newspaper article, dated May 25, 1971	Relevance, Hearsay
238	Plaintiffs' Exhibit 580, Nielson rating chart	Relevance
626	Plaintiffs' Exhibit 56, letter Perlberger to Lear dated 6/18/71	Attorney-client Privilege
239	Plaintiffs' Exhibit 79, letter Perlberger to Farrar Brown dated 7/10/70	Attorney-client Privilege
239	Plaintiffs' Exhibit 84, letter Perlberger to Cohn dated 7/20/70	Attorney-client Privilege
239	Plaintiffs' Exhibit 85 letter Lear to Perlberger dated 7/20/70	Attorney-client Privilege
626	Plaintiffs' Exhibit 87, letter Cohn to Perlberger dated 7/24/70	Attorney-client Privilege
626	Plaintiffs' Exhibit 128, letter Perlberger to Lear dated 6/17/71	Attorney-client Privilege

Defendant's Notice of Motion

Offered at Page	*Document*	*Ground of Objection*
626	Plaintiffs' Exhibit 133, letter Perlberger to Lear dated 6/18/71	Attorney-client Privilege
626	Plaintiffs' Exhibit 138, letter Perlberger to Lear dated 8/6/71	Attorney-client Privilege

Dated: New York, New York
October 29, 1973

Yours etc.

SHEA GOULD CLIMENKO & KRAMER
Attorneys for Tandem Productions, Inc.
330 Madison Avenue
New York, New York
661-3200

To:

HUGHES HUBBARD & REED
Attorneys for Plaintiffs
One Wall Street
New York, New York

Affidavit of Otis Pratt Pearsall Dated November 8, 1973 in Opposition to Defendant's Motion to Strike Certain Trial Exhibits Offered in Evidence by Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 2941 (M.I.G.)

[SAME TITLE]

State of New York)
County of New York) ss.:

Otis Pratt Pearsall, being duly sworn, deposes and says:

1. I am a member of the firm of Hughes Hubbard & Reed, attorneys for plaintiffs, am a member of the bar of this Court, and am familiar with the facts and proceedings in this action.

2. I make this affidavit in opposition to the motion of defendant Tandem Productions, Inc. ("Tandem") to strike certain exhibits offered in evidence by plaintiffs on the trial of this action. Specifically, this affidavit is addressed to the portion of Tandem's motion seeking to strike eight exhibits upon the ground that their receipt in evidence violates the attorney-client privilege. Each of the eight exhibits claimed to be privileged is treated below. Under the pertinent exhibit number, the facts demonstrating that the exhibit is not covered by the attorney-client privilege are set forth. The final paragraph under each exhibit number summarizes the reasons why the document is not privileged and cross-refers to the statement of the applicable legal principle contained in Plaintiffs' Memorandum In Opposition To Defendant's Motion To Strike.

Affidavit of Otis Pratt Pearsall

Exhibit 87 (7/21/70 letter, Cohn to Perlberger)

3. This letter was produced by Samuel Cohn pursuant to a subpoena *duces tecum* issued in connection with plaintiffs' deposition of Mr. Cohn held on July 17, 1973 (the "Cohn deposition"). By means of an exhibit to the subpoena *duces tecum*, Mr. Cohn had been directed to bring to his deposition *inter alia*:

> "All correspondence, communications, memoranda, notes, drafts and other writings reflecting or relating to discussions, proposals, negotiations or agreements made or had during the period from January 1, 1970 through August 31, 1971 as to arrangements between CBS and Tandem, Norman Lear or Alan Yorkin concerning any of the Programs."

4. Tandem was notified of the Cohn deposition by a Notice of Examination dated July 6, 1973. Annexed to this Notice of Examination was a copy of the exhibit annexed to the subpoena *duces tecum* served upon Mr. Cohn. Thus Tandem was well aware of the nature of the materials that Mr. Cohn had been directed to produce.

5. At the commencement of the Cohn deposition, I was given an opportunity to review a file produced by Mr. Cohn entitled "Formerly Those Were The Days", and "All In The Family 10-716B Tandem Productions CBS", containing a collection of documents relating to "All In The Family" (Cohn dep. 3).[1] I selected a number of these documents to be marked for identification and Mr. Cohn agreed to furnish plaintiffs with copies of such documents later in the week (Cohn dep. 3-4), which he did.

1. References to "dep. ——" are to pages of the depositions filed with the Court and are preceded by the name of the witness.

Affidavit of Otis Pratt Pearsall

6. Each of the documents I had selected was assigned an exhibit identification number on the record. The 7/24/70 Cohn to Perlberger letter was assigned number 87 (Cohn dep. 6).

7. Tandem was represented at the Cohn deposition by their present attorneys, Shea Gould Climenko & Kramer, Esqs. Appearing on behalf of the Shea Gould firm was Joseph Ferraro, Esq., who had previously appeared for Tandem at the depositions of Elizabeth Wellman and Robert Daly, employees of the CBS Television Network (Wellman dep. 2; Daly dep. 2).

8. Although Mr. Ferraro had ample opportunity to object to the inspection and production of the allegedly privileged documents contained in Mr. Cohn's file, no objection was raised. As stated above (¶4), Tandem was specifically advised of the scope of the subpoena *duces tecum* served upon Mr. Cohn. In addition, Mr. Ferraro had met with Mr. Cohn prior to my arrival at the deposition. He was present during my review of Mr. Cohn's "All In The Family" file and also present when the documents selected from that file were assigned identification numbers on the record. Furthermore, Tandem took no steps to prevent Mr. Cohn from physically turning over the copies of such documents to plaintiffs later in the week.

9. In the course of his deposition, Mr. Cohn identified Exhibit 87 as his response to Mr. Perlberger's inquiry of July 20 (Ex. 84)[2] (Cohn dep. 62). In addition, Mr. Cohn testified as to the contents of Exhibit 87 (Cohn dep. 62). No objection was made to this testimony.

10. At his deposition on August 21, 1973, Mr. Perlberger testified without objection that Exhibit 87 was Mr.

2. References to "Ex. ——" are to exhibits admitted in evidence.

Cohn's response to his letter of July 20, 1970 (Ex. 84) (Perlberger dep. 50).

11. At their respective depositions on August 20 and 22, 1973, Messrs. Lear, Yorkin and Hayes each testified without objection that he received a copy of Exhibit 87 (Lear dep. 128-29; Yorkin dep. 37-38; Hayes dep. 33).

12. Accordingly, Exhibit 87 is not privileged because Tandem's failure to object, first, to its inspection and production and, second, to Mr. Cohn's testimony as to its contents, constituted a waiver of any privilege which originally may have attached to the document (mem. §I.A.).[3]

Exhibit 84 (7/20/70 letter, Perlberger to Cohn)

13. This letter was produced by Mr. Cohn under the circumstances described in paragraphs 3-8 above, and was assigned on the record exhibit identificaiton number 84 (Cohn dep. 6). Tandem's counsel raised no objection to its inspection or production.

14. In the course of his deposition, Mr. Cohn testified without objection as to the contents of Exhibit 84 (Cohn dep. 61-62).

15. At their respective depositions, Messrs. Hayes and Yorkin each testified without objection that he had received a copy of Exhibit 84 (Hayes dep. 33; Yorkin dep. 37-38).

16. At his deposition, Mr. Perlberger testified without objection that Exhibit 84 was a copy of a letter that he had written to Mr. Cohn (Perlberger dep. 50).

3. References to "mem. ——" are to Plaintiffs' Memorandum in Opposition to Defendant's Motion to Strike Certain Exhibits.

17. Accordingly, Exhibit 84 is not privileged because Tandem's failure to object, first, to its inspection and production and, second, to Mr. Cohn's testimony as to its contents, constituted a waiver of any privilege which originally may have attached to the document (mem. §I.A.).

Exhibit 138 (8/6/71 letter, Perlberger to Lear)

18. This letter was produced by Mr. Cohn under the circumstances described in paragraphs 3-8 above, and was assigned on the record exhibit identification number 138 (Cohn dep. 13). Tandem's counsel raised no objection to its inspection or production.

19. The letter does not contain any legal advice or opinions of Mr. Perlberger. Moreover, it does not relate to facts furnished by Tandem to Mr. Perlberger for purposes of securing legal advice or services. It merely purports to transmit to Mr. Lear for his review and possible execution eight copies of the "new CBS agreement dated July 10, 1970 and the amendment dated July 21, 1971" together wtih a transmittal letter dated July 29, 1971 from Fred Wing of the CBS legal department.

20. Accordingly, Exhibit 138 is not privileged because (1) it neither contains legal advice nor relates to facts communicated by Tandem to its attorney for purposes of securing legal advice or services (mem. §I.B.) and (2) Tandem's failure to object to its inspection and production constituted a waiver of any privilege which originally may have attached to the document (mem. §I.A.).

Exhibit 79 (7/10/70 letter, Perlberger to Farrar-Brown)

21. This letter was produced by Mr. Cohn under the circumstances described in paragraphs 3-8 above, and was assigned on the record exhibit identification number 79

(Cohn dep. 6). Tandem's counsel raised no objection to its inspection or production.

22. At his deposition, Mr. Perlberger testified without objection that Exhibit 79 is a copy of a letter that he wrote to Mr. Farrar-Brown and also testified without objection as to the contents of the letter (Perlberger dep. 36-37).

23. Accordingly, Exhibit 79 is not privileged because Tandem's failure to object, first, to its inspection and production and, second, to Mr. Perlberger's testimony as to its contents, constituted a waiver of any privilege which originally may have attached to the document (men. §I.A.).

Exhibit 85 (7/20/70 letter, Lear to Perlberger)

24. This letter was produced by Mr. Cohn under the circumstances described in paragraphs 3-8 above, and was assigned exhibit identification number 85 (Cohn dep. 6). Tandem's counsel raised no objection to its inspection or production.

25. In the first paragraph of this letter, Mr. Lear notes that he has a copy of Beryl Vertue's letter to Mr. Perlberger and states that Mr. Perlberger should "* * * feel free to answer her candidly; * * *." Mr. Lear then goes on to describe the facts that Mr. Perlberger should communicate to her. It is plain that these facts were not stated in confidence to Mr. Perlberger since Mr. Lear contemplated that they were to be transmitted to a third party, not associated with Tandem. Furthermore, the last two paragraphs of the letter do not contain any facts transmitted to Mr. Perlberger for the purpose of obtaining legal advice or services. To the extent that Mr. Lear asked for advice as to how specific Tandem ought to be in dis-

closing details of the CBS deal to Beryl Vertue, he is seeking business rather than legal advice.

26. At his deposition, Mr. Perlberger testified without objection that Exhibit 85 is a copy of a letter he received (Perlberger dep. 75-76). He further testified without objection that to the best of his knowledge the "details of the CBS deal" referred to in Exhibit 85 were not provided to Mrs. Vertue (Perlberger dep. 76).

27. Accordingly, Exhibit 85 is not privileged because (1) Mr. Lear contemplated that the information contained in it would be conveyed to a third party (mem. §I.C.), (2) it requests business rather than legal advice (mem. §I.D.), and (3) Tandem's failure to object, first, to its inspection and production and, second, to Mr. Perlberger's testimony with respect thereto, constituted a waiver of any privilege which originally may have attached to the document (mem. §I.A.).

Exhibits 56 and 133 (6/18/71 letter, Perlberger to Lear)

28. Exhibits 56 and 133 are identical documents.

29. Exhibit 133 was produced by Mr. Cohn under the circumstances described in paragraphs 3-8 above, and was assigned on the record exhibit identification number 133 (Cohn dep. 12-13). Tandem's counsel raised no objection to its inspection or production.

30. Exhibit 56 was produced by the Columbia Broadcasting System, Inc. ("CBS") in response to a subpoena *duces tecum* issued in connection with plaintiffs' deposition of Sheldon Perry, Elizabeth Wellman and Robert Daly, all of CBS.

31. Tandem has made no effort to explain how this allegedly confidential document found its way into the files of CBS. What evidence does exist on this question suggests that the document was voluntarily disclosed to CBS by Mr. Cohn in furtherance of the business interests of Tandem, his principal. At his deposition, Mr. Perry testified that his best recollection was that Exhibit 56 "* * * was given to certain CBS personnel at a meeting trying to ultimately dispose of the open problems." (Perry dep. 161) That Mr. Cohn was the individual who turned the document over to CBS is indicated by the fact that Exhibit 56, like Exhibit 133, reflects a check mark immediately to the left of Mr. Cohn's name on the final page of the letter. Furthermore, annexed to Exhibit 133 in Mr. Cohn's file was a handwritten note to "Sam", apparently from Sheldon Perry, stating "Many Thanks" (Ex. 133A).[4] Based upon the foregoing, it would appear that Mr. Cohn turned over his copy of the letter to someone at CBS for purposes of a negotiating session, and that Mr. Perry after making a copy (Ex. 56) returned it (Ex. 133). In any case, Tandem has failed to show that CBS' possession of this document is consistent with maintenance of its confidentiality.

32. At their respective depositions, Messrs. Hayes and Yorkin each testified without objection that he received a copy of Exhibit 56 (Hayes dep. 52; Yorkin dep. 52).

33. Pursuant to plaintiffs' Rule 34 Request For Production of Documents dated July 31, 1973, Tandem produced yet another copy of the June 18, 1971 Perlberger to Lear letter. This was a non-letterhead copy which apparently came from the files of Kaplan, Livingston, Goodwin,

4. Ex. 133A was assigned its identification number on page 13 of the Cohn deposition. Although the identification there reads "[a]n affidavit to Plaintiffs' Exhibit 133 is a handwritten note * * *", the word "affidavit is obviously a typographical error. The correct word should be "attachment".

Berkowitz & Selvin. Production of this document was made notwithstanding the fact that it was included on a list of allegedly privileged documents which Tandem submitted to plaintiffs along with the documents produced.

34. Accordingly, any privilege which originally may have attached to Exhibits 133 and 56 has been waived by (1) Tandem's failure to object to the inspection and production of Exhibit 133 (mem. §I.A.), (2) Mr. Cohn's voluntary production of the letter to CBS, and (3) Tandem's voluntary production of the letter to plaintiffs (mem. §I.E.).

Exhibit 128 (6/14/71 letter, Perlberger to Lear)

35. This letter was produced by Mr. Cohn under the circumstances described in paragraphs 3-8 above, and was assigned on the record exhibit identification number 128 (Cohn dep. 12).

36. The letter does not relate to facts furnished by Tandem to Mr. Perlberger for purposes of securing legal advice of services, but merely describes Mr. Perlberger's conversation with Mrs. Vertue, the talent agent for Johnny Speight.

37. Accordingly, Exhibit 128 is not privileged because (1) it relates solely to information learned by Mr. Perlberger from a third party (mem. §I.F.) and (2) Tandem's failure to object to its inspection and production constituted a waiver of any privilege which originally may have attached to the document (mem. §I.A.).

WHEREFORE, plaintiffs respectfully request that defendant's motion be in all respects denied.

Otis Pratt Pearsall

(Sworn to November 8, 1973.)

Opinion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Appearances:

HUGHES HUBBARD & REED, Attorneys for Plaintiffs, New York, N.Y. 10005; Otis Pratt Pearsall, James F. Parver, Allan J. Kasen, Of Counsel.

SHEA GOULD CLIMENKO & KRAMER, Attorneys for Defendant, New York, N.Y. 10017; Milton S. Gould, Joseph Ferraro, Of Counsel.

GURFEIN, D.J.:

On July 5, 1973 Viacom International Inc. ("Viacom") and certain of its subsidiaries commenced this action, based upon diversity of citizenship, against Tandem Productions, Inc. ("Tandem") to vindicate and protect against threatened irreparable injury Viacom's alleged exclusive license to distribute off-network the television series "ALL IN THE FAMILY." Viacom is the successor to the syndication and distribution business of CBS Enterprises, Inc. ("CBS Enterprises"), a former subsidiary of Columbia Broadcasting System, Inc. ("CBS"). This business includes the domestic rerun distribution of television programs after their network run is completed, and the foreign distribution of such programs contemporary with network broadcast. On June 4, 1971, in a spin-off transaction specifically approved by the Federal Communications Commission ("FCC"),[1] CBS

1. *In re Columbia Pictures Industries, Inc.*, 30 F.C.C.2d9, *aff'd sub nom. Iacopi* v. *F.C.C.*, 451 F.2d 1142 (9th Cir. 1971).

Enterprises merged into Viacom, CBS assigned to Viacom whatever rights it possessed or acquired to distribute television programs in syndication, and Viacom's stock was distributed by CBS to its shareholders.[2] Tandem is in the business of producing television programming, and is the packager of ALL IN THE FAMILY.

The complaint charges Tandem with violation of Viacom's exclusive right, as assignee under an agreement between Tandem and CBS, to distribute ALL IN THE FAMILY in syndication both in the United States and abroad. Among other matters, it alleges that Tandem has acted to prevent Viacom from obtaining the tapes and other materials needed to continue its foreign distribution of the series and, further, to cause third parties to undertake such distribution in Viacom's place. The primary relief sought is a declaration of Viacom's contract rights, and an injunction against Tandem's further breach of or interference with such rights.

Upon filing the complaint plaintiffs moved for a preliminary injunction and, in conjunction therewith, sought a temporary restraining order. The Court suggested a "stand-still" stipulation, approved by the Court on July 9, 1973, under which each side undertook to refrain from specified market activities pending the preliminary injunction hearing set for July 23, 1973. Similarly, action on the preliminary injunction motion was deferred when at the hearing on July 23 the parties agreed to continue the standstill stipulation and, in addition, Tandem consented to allow CBS to make available to Viacom the materials required to service two contracts with broadcasters in Finland and Holland. The parties agreed to combine the preliminary injunction hearing with a full trial on the merits, which the Court scheduled to commence on September 17, 1973. Rule 65(a)(2), Fed.R.Civ.P.

2. Block tr. 244-45, 257; Ex. 410.

In the course of the proceedings on July 23, 1973 the Court had determined that CBS was an indispensable party. Plaintiffs thereupon served CBS with a summons and Second Amended Complaint naming CBS a defendant, and asked the Court to realign CBS as a plaintiff. CBS countered with a motion seeking *inter alia* an order dismissing the action as to CBS and directing the other parties to interplead. It repreesnted that it had no interest in the tangible and intangible property at issue in the action, and offered to hold any such property for disposition as directed by the Court. Prior to commencement of the trial, the Court determined that CBS was a stakeholder and signed an order dismissing CBS as a party and converting the suit into an interpleader action.

On August 13, 1973 Tandem served its answer, alleging as a "Fifth Defense" that the agreement between Tandem and CBS on which plaintiffs' claims are founded was void as violative of the antitrust laws. Plaintiffs moved under Fed.R.Civ.P. 12(c), 12(f), 12(h)(2) and 56 to strike the defense as insufficient and for summary judgment thereon. The Court heard argument prior to trial on September 17, 1973, and reserved decision, suggesting that Tandem file a written offer of proof in support of its Fifth Defense and that plaintiff file a written objection to such proof on grounds of relevance. This was to permit the Court to decide whether the antitrust defense was available, without the necessity of first taking extended testimony on the antitrust defense.

The trial took place on September 17 through 20 and on October 4, 1973. Each side introduced the testimony of witnesses, deposition testimony, and documentary exhibits.

The plaintiff seeks a judgment declaring that it has the exclusive domestic syndication and foreign distribution rights to ALL IN THE FAMILY, pursuant to an agreement between CBS and Tandem, the aforesaid rights having been

assigned to it. It also seeks a permanent injunction against Tandem's wrongful interference therewith. CBS holds the video tapes and other material which a distributor requires to make prints which it can license for television performance. On the representations of Tandem, CBS has refused to give Viacom the tapes, treating itself as a mere stakeholder. Viacom contends that a continuation of Tandem's alleged wrongful conduct is not adequately compensable in money damages.

Viacom takes the position that: (1) Tandem granted CBS an exclusive license to distribute the program in syndication, and that CBS assigned its license to Viacom; and (2) Tandem's conduct wrongfully interfered with Viacom's exclusive rights, requiring injunctive relief as a remedy.

Tandem defends, with unusual ingenuity of counsel, on a broad front. It argues that (1) the purported assignment of syndication rights by CBS to Viacom was not an assignment of rights, but an attempted delegation of duties which could not be effective without Tandem's consent; (2) there was no binding contract between CBS and Tandem with respect to distribution until after such a contract was prohibited by Federal Communications Commission ("FCC") regulations under the "financial interest" rule, later explained; (3) the syndication rights were, in fact, never assigned by CBS to Viacom; (4) the exclusive distributorship created by the CBS-Tandem agreement was terminable at will; and (5) the exclusive distributorship agreement was terminable for failure of consideration.

In addition, Tandem, in its answer has asserted its Fifth Defense that Tandem was coerced because of CBS' power as a major network into giving the exclusive distributor's rights to CBS in violation of the antitrust laws, and that, hence, the agreement cannot be enforced by CBS, or by its assignee, Viacom. Viacom, before trial, had moved for summary judgment dismissing the Fifth Defense. I

reserved decision, as indicated above, and permitted Tandem to make an offer of proof at trial, for later determination by the Court whether, assuming those facts, Tandem had a valid antitrust defense to the action. The antitrust defense will be discussed below.

The History of "ALL IN THE FAMILY"

In May, 1970 negotiations with respect to this program began between CBS and Tandem, a company owned by Norman Lear and Alan Yorkin. "ALL IN THE FAMILY" is based on an English television show, " 'TIL DEATH US DO PART." The owner of the British copyright, Johnny Speight, gave Tandem as of July 1, 1970 a license under the British copyright, with the right to sublicense CBS distribution in the United States, and certain other territories.

CBS, in the name of Tandem, secured and registered, in addition, a federal copyright for each episode. At the time of the CBS-Tandem negotiations, however, foreign territories, which had been licensed under the British copyright had not been cleared for exploitation under the Tandem license to CBS.

The negotiations between Tandem and CBS in June-July, 1970 resulted in an oral agreement, later memorialized in a written contract, dated "as of July 10, 1970." I find that the essential points of the oral agreement were: (1) The network broadcast of "ALL IN THE FAMILY" would begin either in January, 1971 or in the Fall of 1971, at CBS' option. (2) The term of the network broadcast would be five years or five and a half years, depending on when the broadcasts actually began; after the term CBS was to have first negotiation—first refusal rights. (3) The license fee was fixed for each new episode, with CBS absorbing "below the line" expenses above a specified amount

up to a specific maximum per episode.[3] (4) There was a fixed license fee for repeat episodes. (5) There were specific annual license fee escalations. (6) Tandem was protected from union increases by license fee adjustments "effective from and after July 10, 1970," and CBS was to hold down "below the line" costs by pegging the charges for its services to its current rate card. (7) CBS was to advance certain pre-production expenses, subject to recoupment. (8) Certain pre-production moneys were also to be paid by CBS on a non-recoupable basis. (9) CBS committed itself for a minimum of 13 episodes. (10) CBS' right to continue each succeeding year was conditioned on its having ordered at least 22 new programs during the previous year. (11) For subsequent years of the term CBS was committed to order a minimum of 16 episodes. (12) Tandem agreed that CBS shall have all syndication and distribution rights, and that CBS would deduct its distribution expenses and standard syndication fees (40% for domestic sales, 40% for foreign sales, 25% for regional sales and 10% for network sales), and remit 100% of the net profits to Tandem. CBS also agreed to give Tandem $16,000 toward liquidating a liability to ABC, with the understanding that Tandem would use its best efforts to clear the uncleared foreign territories.[4] (13) Tandem retained the merchandising rights, with a 15% profit participation to CBS. (14) Norman Lear was to produce, stage, and "head

3. "Below the line expenses" is a term of art in the motion picture and television industry. Generally, these are actual production costs, as distinguished from the cost of screenplay, actors, directors, etc. which are "above the lnei" expenses.

4. Domestic syndication is the licensing of television programs for broadcast to stations on a market by market basis as opposed to an electronic distribution which takes place when a program is fed into a network. International syndication is the licensing of television programs to broadcasters around the world. It includes foreign networks. (Block tr. 243).

write" the program, and later become executive producer. (15) Lear was to receive a payment from CBS for "standing by," if CBS elected to defer the series.[5]

There was no discussion of an assignment clause in June-July 1970. In the final agreement between CBS and Tandem, executed on July 22, 1971 "as of July 10, 1970," there is, however, an assignment clause reading as follows:

> "CBS may assign its rights hereunder in full or in part to any person, firm or corporation provided, however, that no such assignment shall relieve CBS of its obligations hereunder."

The plaintiff contends that the subject-matter orally agreed upon by July, 1970 constitutes a binding agreement. The defendant relies on the well-known doctrine that if a material element of a contemplated contract is left for future negotiation, the contract is unenforceable. *Willmott* v. *Giarraputo*, 5 N.Y.2d 250 (1959); *Ansorge* v. *Kane*, 244 N.Y. 395 (1927).

It relies on the existence of certain "material open items" to support its legal proposition that there was no contract on July 10, 1970. These are: (1) whether Canada would be included in the network broadcast area; (2) how much CBS would control the content of the programs; (3) whether it was clear what was meant by CBS' "standard fees" for distribution; (4) whether CBS would reimburse Tandem for the cost of the "black family;"[6] (5) and whether the agreement would be assignable.

I find that none of these was so material as to permit a finding that the agreement was to be held in abeyance until they were resolved. The evidence establishes that within thirty to sixty days following the negotiation in

5. See Cohn to Lear, June 25, 1970, Ex. 76; Ex. 87.

6. The "black family" was an essential element in the program idea of exposing the protagonist's ludicrous racism.

June, 1970, there was a meeting of the minds on all fundamental matters.[7]

(1) Whether CBS was to get Canadian network broadcast rights without payment of additional license fees was discussed, but apparently resolved in favor of Tandem. In any event, the Canadian network broadcasting was a relatively minor appendage to the whole deal. (2) The control of programming by CBS was not left open; the parties apparently came to a sensible agreement about it, providing that the program would ridicule the far "left" as well as the far "right."[8] (3) CBS' "standard fees" for distribution were well-known and required no spelling out by percentage figures. (4) With regard to payment by CBS for the black family, Mr. J. William Hayes of Tandem acknowledged that its ultimate solution represented an adjustment (in March 1971) . . . "to the previously existing agreement . . ."[9]

With respect to the right of CBS to assign its domestic syndication and foreign distribution rights, I find that there was no discussion of this matter in 1970, and that there was no right to assign expressly given to CBS by Tandem in 1970. The lack of an assignment clause did not, however, prevent the agreement from becoming a binding agreement.

Mr. Lear began working on the production in July-August, 1970.[10] Lear and his staff moved into the CBS offices in September or October, 1970.[11] In December, 1970 and January, 1971 efforts were made to clear foreign ter-

7. Samuel Cohn, Executive Vice-President of Tandem's agent, Creative Management Associates, addressed a memorandum on June 25, 1970 to Mr. Lear summarizing the CBS proposal (Ex. 76).

8. See Lear Dep. 110.

9. Ex. 29.

10. Lear Dep. 133-34; 151-52.

11. Lear Dep. 141-42.

ritories for syndication.[12] The parties proceeded to produce and broadcast; to incur costs and to pay license fees.[13]

When, in July of 1971, CBS and Tandem entered into the written agreement "as of July 10, 1970," the assignment clause was made a part of it. When a written contract provides that it shall be effective "as of" an earlier date, it generally is retroactive to the earlier date, *Mutual Life Ins. Co.* v. *Hurni Packing Co.*, 263 U.S. 167, 175-176 (1923); *Brewer* v. *National Surety Corp.*, 169 F.2d 926, 928 (10 Cir. 1948); *Matthews* v. *Jeremiah Burns, Inc.*, 205 Misc. 1006, 1013 (Sup. Ct. N.Y. Co. 1954). Hence, an assignment made at any time after July 10, 1970 would be effective under the contract, if validated by such contract.

Tandem argues, however, that the oral contract I have now found to exist, cannot be effective, in any event, because the parties contemplated that there would be no binding agreement until there was a formal agreement embodying the terms. It is true that "[w]here a written agreement is contemplated, a mere oral understanding is insufficient, in the absence of proof that the parties intended to be bound by it." *Rosenzweig* v. *Salkind*, 5 A.D.2d 58 (1st Dept. 1957). See *Schwartz* v. *Greenberg*, 304 N.Y. 250 (1962). On the other hand, where parties have reached an agreement, it will be given effect unless it is shown that they do not intend to be bound until the execution of the formal writing. *V'Soske* v. *Barwick*, 404 F.2d 495, 499 (2 Cir. 1968), *cert. denied*, 394 U.S. 921 (1969); *Tymon* v. *Linoki*, 16 N.Y. 2d 293, 299 (1965); *Sanders* v. *Pottlitzer Bros.*, 144 N.Y. 209 (1894). Here I can find no such intention. There was evidence that in the broadcasting industry, as in the motion

12. Ex. 114, 115, 116, 22, 48; see also Ex. 34, 35.

13. The lawyers apparently ground out their product more slowly than did the cameras. It was not the lawyers' fault. While these business dealings were ongoing, no one appeared to have time to give the lawyers instructions for formalizing the agreement of the parties.

picture industry, agreements reached are often reduced to writing after they have been already performed in whole or in part.[14] The production and broadcast of the first season of ALL IN THE FAMILY, without a written contract, is strong circumstantial proof that the minds of the parties had met on the essential elements, and that they were not waiting for a formal written instrument. *Eggers* v. *Armour & Co.*, 129 F.2d 729, 732 (8 Cir. 1942); *Newburgh* v. *Florsheim Shoe Co.*, 200 F. Supp. 599, 602 (D. Mass. 1961); 1 Williston, Contracts (3d ed. 1957) §28A. If CBS had breached its obligation to continue the broadcasts, Tandem would have had the right, in my opinion, to maintain that there was a binding obligation.

The foregoing finding that there was an oral contract between CBS and Tandem in about July, 1970 has significance in two aspects of the case at bar. Tandem contends that (1) the contract did not become effective until *after* an FCC regulation had made it illegal; and (2) even if there was a binding agreement in July, 1970, it was not in the contemplation of Tandem, in making its bargain with CBS, that CBS would have the right to assign its duties under the syndication and foreign distribution agreement to the plaintiff, Viacom.

To put the matter in proper perspective, the story of the FCC regulation must be told briefly: On May 4, 1970 the FCC adopted a rule (the "financial interest rule") which became effective on October 1, 1970 and which prohibited any television network from acquiring after that date any ancillary interest in a television program, such as the exclusive license to distribute ALL IN THE FAMILY in syndication. Contending that the agreement under which CBS acquired such license was not concluded until after October 1, 1970 Tandem asserts that such acquisition violated the financial interest rule and was therefore void.

14. Sipes tr. 214-15; Yorkin Dep. 36-37; Lear Dep. 48.

Opinion

Even had the financial interest rule become operative on October 1, 1970 as Tandem alleges, it would have been inapplicable to the transaction in issue, for I have found that there was a binding agreement for syndication between CBS and Tandem in the summer of 1970. In fact, however, the "financial interest rule" did not become operative until July 23, 1971.

The financial interest rule is paragraph (j) (1) (ii) of Section 73.658 of the FCC's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting.[15] As originally adopted, the rule provided in pertinent part:

> "(j) *Network syndication and program practices*
>
> "(1) Except as provided in sub-paragraph (3) of this paragraph, no television network shall:
>
> * * *
>
> "(ii) after September 1, 1970, acquire any financial or proprietary right or interest in the exhibition, distribution, or other commercial use of any television program produced wholly or in part by a person other than such television network, except the license or other exclusive right to network exhibition within the United States and on foreign stations regularly included within such television network . . ." (*Report and Order*, 23 F.C.C. 2d 382, 402 (1970))

On August 21, 1970 the FCC announced an amendment of the financial interest rule changing the date after which such rule was to become operative from September 1, 1970 to October 1, 1970. 35 F.R. 13650 (1970).

15. An amended version of the financial interest rule is at 47 C.F.R. §73.658(j)(1)(ii) (1972).

Opinion

On August 10, 1970 Mount Mansfield Television, Inc. filed in the United States Court of Appeals for the Second Circuit a petition for review of the financial interest rule, among others, and in due course this proceeding was consolidated with several similar proceedings.[16] On October 19, 1970 the Court of Appeals for the Second Circuit issued three virtually identical orders in these proceedings, providing that

> ". . . A stay of the effective date of the financial interest rule, section 73.658(j)(1) of the Rules and Regulations of the F.C.C. pending argument of the appeal be, and it hereby is granted."[17]

At the argument of the appeal on January 19, 1971 the Court of Appeals continued the same stay it had granted on October 19, 1970 until 30 days after the issuance of the mandate.[18] The appeal was decided on May 3, 1971, *Mount Mansfield Television, Inc.* v. *F.C.C.*, 422 F. 2d 470 (2 Cir. 1971), and the mandate was issued on June 23, 1971.[19] Since the 30th day following issuance of the mandate was July 23, 1971 the "financial interest" rule became effective to prohibit any television network from acquiring any such interest after that date.

Since I have found that there was a binding oral agreement in 1970, the FCC regulation was not effective to make the agreement, previously made, illegal.

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16. Ex. 583.

17. Ex. 585, 586, 584; Ex. 583 p. 3.

18. Ex. 583 p. 6; Pisana tr. 557-59. Frank Pisana, Deputy Clerk of the United States Court of Appeals, testified that the stay and order referred to in the docket entry for January 19, 1971 (Ex. 583 p. 6) could not be found (Pisana tr. 556), but that he had been present in th court room on that date in his official capacity, had recorder the second Circuit's order continuing the stay granted on October 19, 1970, and had reported such order to the docket clerk who made the entry on the docket sheet (Pisana tr. 557-58).

19. Ex. 583 p. 7; Pisana tr. 558.

The second point mentioned presents more difficulty. I have found that there was no right to assign expressly reserved in the 1970 oral agreement. When Tandem came to a meeting of the minds with CBS, it had the right to assume that non-network syndication and foreign distribution would be performed by CBS itself or by its wholly-owned subsidiary, CBS Enterprises, which normally handled television distribution. Although the impact of the proposed regulation was primarily directed against the major networks, it surely must have been brought to the attention of packagers and their counsel.[20] Whether or not both parties knew of the impending regulation prohibiting the networks from having a financial interest in syndication, the evidence indicates that the matter was simply not discussed. Both parties assumed that the granting of distributorship rights, including domestic syndication, to CBS was legal.

On September 25, 1970, CBS circulated a draft "Memorandum of Agreement," dated as of July 10, 1970.[21] The draft contained the following: "20) CBS may assign its rights hereunder in full or in part to any person, firm or corporation provided, however, that no such assignment shall relieve CBS of its obligations hereunder." This was a "boilerplate" clause customarily used by CBS in its agreements.

Mr. Hayes, the business manager of Tandem, made some comments on the draft on October 6, 1970[22] but, essentially, comment was reserved for Mr. Martin Perlberger, the attorney for Tandem in Los Angeles. Apparently Mr. Perl-

20. The syndication and financial interest rules were first proposed for public consideration in March, 1965 (30 F.R. 14470). See *Mt. Mansfield, supra,* 442 F.2d at 474.

21. Exhibit 12. It referred to "WALLY'S CASTLE," which was an earlier tentative title for "ALL IN THE FAMILY."

22. Ex. 16.

berger was not asked to do anything for six months, until April 1971 after CBS had "picked up" the series for another season,[23] the matter having been turned over to the West Coast for handling on March 31, 1971. On that date Sheldon Perry, Associate Director, Business Affairs of CBS, notified Tandem's agent, Creative Management Associates, that CBS "[is] operating under the Memorandum of Agreement dated as of July 10, 1970. . . ."[24] Hayes also, on March 26, 1971, referred to "the previously existing agreement." He also spoke of "adjustments in the existing agreement."[25]

Just as the oral agreement of July 10, 1970 was being negotiated, the FCC announced its "financial interest" regulation on May 4, 1970, 23 F.C.C.2d 382, 402. There were various stays by the Court of Appeals and by April, 1971 the *Mount Mansfield* case, *supra*, had been argued and was *sub judice* in the Second Circuit.[26] Negotiations for amendment of the draft "Memorandum of Agreement as of July 10, 1970" continued on the West Coast from April 1, 1971 to July 22, 1971, when CBS prepared a final version of the agreement, reflecting the parties' resolution of all questions.[27] Amendments of certain fees and costs were made, but CBS wrote, "[e]xcept as modified above, all other terms and conditions of said July 10, 1970 Memorandum of Agreement shall remain in full force and effect and are hereby ratified and confirmed." Paragraph 20, the assignment clause, still remained.

By this time, of course, Tandem, as well as CBS, was aware that CBS had applied to the FCC for permission to

23. Perlberger tr. 561-66; Sipes tr. 224-26; Ex. 32.

24. Ex. 32.

25. Ex. 29.

26. On May 3, 1971, the Court decided that the "financial interest" rule was valid.

27. Ex. 63.

"spin off" to its shareholders a company which would have the syndication and distribution rights which CBS had. The spin-off of Viacom, the new entity, was approved by the FCC on June 3, 1971. 30 F.C.C.2d 9, and by the Ninth Circuit on November 12, 1971. *Iacopi* v. *F.C.C.*, *supra*. Its stock was distributed to the CBS stockholders pursuant to the Commission's directions.

In connection with the "spin-off," CBS and Viacom entered into an agreement made "as of December 31, 1970."[28] Under the December 31, 1970 agreement CBS, in exchange for the Viacom stock, assigned to Viacom whatever rights it possessed or acquired, to distribute in syndication throughout the world, certain identified program series[29] initially broadcast prior to December 31, 1970, and all other programs or program series initially broadcast after that date during the balance of the 1970-71 broadcast season or during the 1971-72 broadcast season.[30]

Beginning with March or April of 1971, Tandem raised objections to giving CBS a blanket right of assignment. After Tandem learned that CBS intended to assign the distribution rights to ALL IN THE FAMILY to Viacom, Tandem made further objections. Hayes, the business manager of Tandem, discussed the problem at length with Gerald Rubin[31] and with Donald Sipes,[32] Vice-President of CBS. Sipes discussed it with the CBS personnel[33] and with Block

28. Hayes tr. 410; Block tr. 244-45.

29. Ex. 410, ¶1 and Ex. D ¶II; Block tr. 245.

30. Since ALL IN THE FAMILY was initially broadcast over the CBS television network during the 1970-71 broadcast season (Sipes tr. 203), Viacom under the December 31, 1970 agreement was entitled to whatever syndication rights CBS had on December 31, 1970 or thereafter acquired.

31. Hayes tr. 393.

32. Sipes tr. 148.

33. Sipes tr. 152.

of Viacom.[34] Perlberger talked to Mrs. Nelson, the lawyer for CBS, about it.[35]

CBS refused to budge, and Tandem finally signed the agreement with the assignment clause intact, knowing that CBS was assigning the distributorship to Viacom. Indeed, Hayes of Tandem met with Block of Viacom before the agreement was signed.[36]

Tandem maintains that, although it signed the contract with the obnoxious assignment clause, it, nevertheless, told CBS that it had reservations whether CBS could validly assign to Viacom under that clause. The objection was in no way based on alleged illegality because of the FCC "financial interest" rule.[37]

The difficulty with the argument is that it flies in the face of the parol evidence rule. What the assignment of rights "in whole or in part" means is a matter for judicial construction. There is no claim that both CBS and Tandem had agreed to an interpretation of the clause.

The contention is simply that one signatory who interpreted the paragraph his own way, did not get the acquiescence of the other party, but signed the contract nevertheless. To accept such a contention, on the basis of oral testimony, would, I think, destroy the validity of integrated agreements.

When CBS submitted the final written agreement to Tandem, CBS wrote a side-letter dated August 26, 1971.[38] In this letter, CBS left it to Viacom and Tandem to formulate whatever new deal they wanted to make, subject to protecting the rights of CBS particularly with respect to non-interference with its network presentation. The new

34. Sipes tr. 165-65a; Block Dep. 93.

35. Perlberger tr. 600-604.

36. Hayes tr. 396-97.

37. Perlberger tr. 623.

38. Ex. 709.

deal was to become effective to supersede paragraph 12, relating to distribution rights, only if an agreement between Tandem and Viacom "is finalized." In fact, there were negotiations, but no agreement was "finalized."

Tandem argues that the side-letter proves that there had been no agreement between CBS and itself on the meaning of the assignment clause, and that the side-letter was prepared for that very reason. I find no convincing proof of that. It was an acceptance and reemphasis of CBS' position that unless Tandem could make a better deal with Viacom and "finalize" it, Tandem would be bound to the deal already made. When Tandem signed the main agreement with CBS, which included distribution rights to CBS and the assignment clause, with knowledge that CBS intended to assign the distribution rights to Viacom, it was bound. Its signing of the contract, in the face of the side-letter, only emphasizes that its sole escape from the terms of the main contract was to "finalize" a different deal with Viacom. Tandem knew, in any event, that the side-letter gave it no right to negotiate with anyone other than Viacom.

The unfruitful negotiations between Tandem and Viacom apparently continued into early 1973.[39] On March 26, 1973 Tandem sent Viacom a letter purporting to terminate Viacom's right to distribute ALL IN THE FAMILY.[40] On April 26, 1973 Tandem's attorneys notified CBS not to release any masters, tapes, or segments of the program without the permission of Tandem,[41] and CBS told Viacom it had notified its operation personnel to conform to Tandem's directive to CBS.[42] Tandem then entered into an agreement with Dana Murray, a film distributor in Toronto, to take over the foreign distributorship of ALL IN THE

39. Block Dep. ¶19-22.

40. Ex. 595.

41. Ex. 175.

42. Ex. 74.

FAMILY commencing June 1, 1973.[43] That act apparently precipitated this action.

These acts of Tandem clearly constitute a breach of the exclusive distributorship given to CBS for a valuable consideration, which was assigned to Viacom. As assignee, Viacom may sue for such breach. *Epstein* v. *Gluckin*, 233 N.Y. 490, 492 (1922); *Wagner* v. *Braunsberg*, 5 A.D.2d 564, 568 (1st Dept. 1958); *Pacific Finance Corp.* v. *City of Lynwood*, 300 Pac. 50, 53 (1931).

The grant of an exclusive license implies a covenant not to do anything which would interfere with the licensee's right to enjoy the fruits of the license. *Kirk La Shelle Co.* v. *Paul Armstrong Co.*, 263 N.Y. 79, 87 (1933); *Madison Pictures, Inc.* v. *Pictorial Films, Inc.*, 6 Misc. 2d 302, 316-321 (Sup. Ct. N.Y. Co. 1956); *Waverly Productions, Inc.* v. *RKO General, Inc.*, 32 Cal. Rptr. 73, 80 (1963).

There was also an unjustifiable interference with the contract between CBS and Viacom. *Reiner* v. *North American Newspaper Alliance*, 259 N.Y. 250, 254-55 (1932); *Metropolitan Opera Ass'n* v. *Wagner-Nichols Recorder Corp.*, 199 Misc. 786, 802-803 (Sup. Ct. N.Y. Co. 1950), *aff'd*, 279 App. Div. 632 (1st Dept. 1951).

At the time Tandem gave CBS syndication rights in conjunction with the network broadcast right, it did not conceive that CBS would assign the syndication rights. Tandem might, therefore, have had a right to rescind. But Tandem passed up its opportunity to rescind by signing the contract, knowing of the assignment to Viacom.

Tandem argues, however, that a general clause permitting the assignment of rights cannot be construed as permitting the assignment of burdens, without the consent of the other party.

The evidence shows, however, that, prior to signing, Tandem actually knew the construction put on the assign-

43. Perenchio Dep. 12-14.

ment clause by the other party, CBS. Tandem could have refused to sign until it had made a new arrangement with Viacom. It not only signed, knowing the circumstances, but it also negotiated with Viacom directly even to the point where Tandem now contends, paradoxically, that it had a binding agreement with Viacom.

The negotiations between them establish that Viacom was hardly *persona non grata* to Tandem. The hard points were the term of the distributorship and the minimum sales per program guarantees by Viacom, rather than the capability of Viacom to assume the distributorship duties of CBS.

The assignment clause, in my judgment, permitted an assignment of distributorship rights which could not be effective without the concurrent assignment of distributorship duties. That is what Tandem agreed to when it signed the agreement although it knew this is precisely what CBS intended the clause to mean. There is no writing by Tandem which puts a gloss on CBS' side-letter, or which says that if Tandem cannot come to an agreement with Viacom, it reserves the right to contend that CBS has no right of assignment of all. It is doubtful whether CBS would have signed under such circumstances, for it had a good faith obligation to its shareholders who were the recipients of the Viacom shares.

The argument that, although CBS had the right to assign, it never actually did so, is not convincing in the light of events. Viacom has been sublicensing abroad in foreign territories. It has been paying Tandem its share of the revenues collected, and Tandem has accepted them, if not with pleasure, at least with good grace. The correspondence between CBS and Viacom, in any event, constitutes an assignment, though formality hardly appears to be the long suit of house counsel in the industry—perhaps a sign that Hollywood lawyers are, like country lawyers, more trusting than their big city brothers.

Opinion

Tandem's contention that the license to distribute ALL IN THE FAMILY is terminable at will because the 7/10/70 Agreement does not expressly state a term of duration, is without merit. As Professor Nimmer has stated, "Where an assignment or license does not expressly prescribe the period or term of its duration, it will generally be construed (in the absence of evidence of a contrary intent) to be effective for the duration of the then existing copyright term of the work." Nimmer, Copyright §125.7 at 551 (1973 ed.). Indeed, in *Manners* v. *Morosco*, 258 Fed. 557 (2 Cir. 1919), the plaintiff granted the defendant an exclusive license silent as to duration, to produce and perform plaintiff's copyrighted play. In plaintiff's action to enjoin defendant from producing the play, the Court held:

> "Since the contract is not revocable by will by either party or otherwise limited as to its duration by its express terms or by the inherent nature of the contract itself with reference to its subject-matter, it is presumably intended to be permanent or perperpetual in the obligation it imposes." 258 Fed. at 559.

This construction was expressly affirmed by the Supreme Court, while reversing on other grounds. *Manners* v. *Morosco*, 252 U.S. 317, 325 (1919).

The Fifth Defense

The Fifth Defense alleges that the purported agreement between CBS and Tandem pursuant to which CBS acquired the exclusive right to syndicate or distribute ALL IN THE FAMILY was unlawful and void, because CBS coerced Tandem into granting it the syndication rights by conditioning Tandem's access to the CBS television net-

work during prime evening hours upon the granting of such rights.

The plaintiffs contend that if Tandem has an antitrust claim it should be raised in a separate action, and that since Tandem has received benefits from the contract, it cannot now avoid its obligations thereunder by alleging that the contract is illegal.

In essence, the defendant claims that a judgment against it would have the effect that the Court would be enforcing a contract illegally obtained by coercion. The plaintiffs contend that a party should not obtain the benefits of a contract and then withhold the consideration promised. Although a plaintiff generally must prove it was *coerced*, not merely persuaded in the tie in, *Ford Motor Co.* v. *United States*, 335 U.S. 303, 316-320 (1948); *American Mfrs. Mut. Ins. Co.* v. *American B.-P. Theatres, Inc.*, 446 F.2d 1131, 1137 (2 Cir. 1971), *cert. denied*, 404 U.S. 1063 (1972), on the tender of proof I must assume that Tandem could prove coercion.

A summary of the offer of proof is as follows:

CBS, engaged in interstate commerce, owned five television stations in a network that includes about 200 affiliates. By 1964 for economic reasons prime time network television ha[illegible]ecome virtually the only economically profitable market for television adventure, drama and comedy entertainment programs. The increase in production costs, by 1964, had largely priced such programs out of the syndication market. Buying power is concentrated in the three networks which control access to prime time network television. The bulk of television programs are produced by independent producers and then sold to one of the three national networks for exhibition. Although networks produced only 19.8% of all prime time network programs in 1964, they received interests in the syndication and other subsidiary rights in 75.7% of all programs exhibited on

the networks during that year. In 1968 CBS produced 17.8% of all prime time programs carried on the CBS television network, but participated in the syndication and other subsidiary rights to 79.5% of the prime time programs carried on the network. During the negotiations between Tandem and CBS, Tandem sought unsuccessfully to retain the syndication rights to ALL IN THE FAMILY. In refusing, CBS is said to have stated that Tandem did not have sufficient bargaining power to retain the syndication rights. There is competition among companies engaged in syndication to whom producers can sell syndication rights for valuable consideration. Tandem was prevented, and is being prevented, from selling syndication rights in the syndication rights market and, hence, is being restrained in trade and commerce. The offer of proof then quotes from the Federal Communications Commission findings to the effect that the prohibition of domestic syndication by the networks would make for fairer competition.

The FCC by its "financial interest" rule has recognized that the major networks tend to have monopoly power. Such power includes the ability to require the packager to grant to the network the right to syndicate domestically and to distribute in foreign territories as a prerequisite to network access. For purposes of legal discussion, we may assume that CBS by its power in the marketplace had the power to coerce Tandem into granting the rights in suit. We may also assume that Tandem does not seek rescission but is quite happy in the continuation of the network broadcast on CBS and in receiving the revenues appertaining thereto.

For reasons of confidentiality the exhibits have been covered by protective order, and I shall not divulge the actual amounts paid to Tandem by CBS from the beginning to the present. Suffice it to say, for these purposes, that it is in the millions of dollars. As its share of the foreign syndication rights as well, Tandem has been paid and has

accepted from Viacom through June 30, 1973, the amount of $105,925.23.

The FCC's "syndication" and "financial interest" rules were not based on an alleged violation of the Sherman Act. The FCC has no power to enforce the Sherman Act and does not purport to do so. *National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943). It did not find, in fact, in its promulgation of the syndication rule "that the networks *now* dominate the syndication business," *Mt. Mansfield Television, Inc.* v. *F.C.C.*, 442 F.2d 470, 487 (2 Cir. 1971). The rule was "aimed at potential rather than actual domination or restraints. . . ." *Id.* Accordingly, the Commission has not preempted the antitrust field, and a private action for violation of the Sherman Act would lie.[44]

This action, however, is not such an action. The antitrust claim is offered as a defense to the action. As a shield, it may be paper thin.

Tandem is right when it says that the consideration is divisible. There are fixed license fees for the network broadcast, and there are separate determinable license fees for domestic and foreign syndication. Indeed, if the assignment to Viacom is upheld, there will be a complete separation of the fees paid for the respective licenses. The syndication rights remain the subject of a separate contract, though incorporated in the same document.

The issues for decision are these. Is the Fifth Defense an attempt to take advantage of the benefit of selling the network license without accepting the burden of the related distributorship agreement? Or is the attempted enforcement of the distributorship agreement a separate matter which requires the active intervention of a court of equity to enforce it? In any event, does the Sherman Act allow

44. The judicial approval of the specific spin-off of Viacom by CBS with this bundle of rights, *Iacopi* v. *F.C.C.*, 451 F.2d 1142 (9 Cir. 1971), is not binding on Tandem since it was not a party.

an implicit defense, not explicit in the statute, in any breach of contract action, whether at law or in equity?

The Supreme Court in *Kelly* v. *Kosuga*, 358 U.S. 516 (1959), went quite far in its holding that a Sherman Act defense could not be interposed in a suit for breach of a contract to take delivery of onions, which was allegedly part of a restrictive conspiracy to keep onions off the market in order to raise the price.

The court said that "[a]s a defense to an action based on contract, the plea of illegality based on violation of the Sherman Act has not met with much favor in this court." 358 U.S. at 518. Mr. Justice Brennan noted that the Supreme Court had "observed that the Sherman Act's express remedies could not be added to judicially by including the avoidance of private contracts as a sanction [citing D. R. Wilder Mfg. Co. v. Corn Products Refining Co., 236 U.S. 165, 174-175 (1915)]" 358 U.S. at 519. He added that "the federal courts should not be quick to create a policy of nonenforcement of contracts beyond that which is clearly the requirement of the Sherman Act." *Id.* There was, perhaps, an implied exception "where the judgment of the Court would itself be enforcing the precise conduct made unlawful by the Act. . . ." *Id.* at 520. See *Dickstein* v. *duPont*, 443 F.2d 783 (1 Cir. 1971).

Earlier the Court had said in *Small Co.* v. *Lamborn & Co.*, 267 U.S. 248 (1925): "It is only where the invalidity is inherent to the contract that the Act may be interposed as a defense. With that exception the remedies which the Act provides for violations of it are exclusive." 267 U.S. at 252.

Such inherent invalidity may perhaps be found in resale price maintenance agreements, exclusion from territories agreements, group boycotts, or overall illegal schemes to monopolize. These are merely illustrative of what I take to be inherently invalid agreements. A contract for the

sale of goods or the granting of a license, regardless of background, is not inherently invalid. But cf. *Associated Press* v. *Taft-Ingalls Corporation*, 340 F.2d 753 (6 Cir. 1965), and cf. dissenting opinion at 769. In the absence of a definitive statement from higher authority, my own judgment must be that unless the act ordered by the Court is itself illegal, the contract is not subject to the antitrust defense. There is no such act to be ordered here.

It does not seem to me that this result is inequitable. Tandem made its bargain and got for itself a very good thing, a major network broadcast. I sympathize with their disappointment that it is not the CBS subsidiary, CBS Enterprises, which is doing the distribution as was expected. But I daresay the antitrust defense would have been stillborn if CBS Enterprises had not been pushed out of the picture by the FCC. Though Viacom may seem a less desirable mate, its suggested infirmities hardly defeat the rule of *Kelly* v. *Kosuga*, *supra*.

I must strike the Fifth Defense and hold the tendered evidence inadmissible. Accordingly, I find the validity of the license to be unimpaired by the antitrust defense and that said license is alive and subsisting. Viacom is entitled to a declaratory judgment and injunctive relief.[45] Plaintiff may submit an appropriate decree and judgment on notice.

The foregoing constitutes the findings of fact and conclusions of law, pursuant to Rule 52a, Fed.R.Civ.P.

January 4, 1974

MURRAY I. GURFEIN
U.S.D.J.

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45. I have granted Tandem's motion to exclude Exhibits 56, 79, 84, 85, 87, 128, 133 and 138 because of the attorney-client privilege.

Correction of Opinion

Re: 1/4/74 Opinion No. 40172

UNITED STATES GOVERNMENT

MEMORANDUM

DATE: Jan. 14, 1974

TO : Clerk of the Court

FROM : Judge Gurfein

SUBJECT: Viacom International Inc. et al., Plaintiffs, against Tandem Products, Inc., Defendant
73 Civ. 2941 MIG

CORRECTION OF OPINION

In Footnote 27, delete Ex. 138.

MURRAY I. GURFEIN
U.S.D.J.

cc: Hughes Hubbard & Reed
Shea Gould Climenko & Kramer
West Publishing Company

Final Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

This cause having come on for trial and the Court having filed its Opinion, constituting its Findings of Fact and Conclusions of Law, on January 4, 1974,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that final judgment in favor of plaintiffs and against the defendant is hereby granted and ordered entered as the judgment in this action as follows:

1. As used in this Final Judgment:

(a) "Viacom" shall mean Viacom International Inc.;

(b) "Tandem" shall mean Tandem Productions, Inc.;

(c) "CBS" shall mean Columbia Broadcasting System, Inc.;

(d) "July 10, 1970 Agreement" shall mean the agreement dated as of July 10, 1970 between CBS and Tandem;

(e) "December 31, 1970 Agreement" shall mean the agreement dated as of December 31, 1970 between CBS and Viacom;

(f) "The British Copyright License" shall mean the agreement dated January 4, 1971 as of July 1, 1970 between Johnny Speight and Tandem, as

amended by letter agreements dated October 5, 1971 and November 22, 1971 between Johnny Speight and Tandem;

(g) "American Copyright" shall mean the federal copyright secured under the United States copyright laws for an episode of the television program ALL IN THE FAMILY; and

(h) "to distribute or syndicate" shall mean to exercise Tandem's rights under the American Copyright and/or The British Copyright License to distribute or syndicate each of the episodes of ALL IN THE FAMILY for which CBS contracted under the July 10, 1970 Agreement in the United States, its territories and possessions (including Puerto Rico) and in foreign areas.

2. Tandem granted to CBS under the July 10, 1970 Agreement, CBS validly assigned to Viacom under the December 31, 1970 Agreement, and Viacom has and is entitled to (subject to the terms of the December 31, 1970 Agreement) an exclusive license to distribute or syndicate each of the episodes of the television program ALL IN THE FAMILY for which CBS contracted under the July 10, 1970 Agreement. With respect to each such episode, Viacom's exclusive license shall continue for a period equal to the duration of the initial copyright term of the American Copyright secured for such episode and the duration of any renewal or extension of such copyright term. If Viacom shall distribute or syndicate any episode or episodes of ALL IN THE FAMILY in any territory not licensed or by any means or devices not authorized under the British Copyright License, and by reason of such conduct it is claimed that The British Copyright License has been breached or infringed, Viacom shall indemnify and hold

Tandem harmless from and against any and all liability arising from the alleged breach or infringement of The British Copyright License, provided, however, that Viacom shall have the right to assume the defense of any claim or litigation to which the foregoing indemnity may apply.

3. Tandem is permanently enjoined for the duration of Viacom's rights described in paragraph 2 above from interfering with the enjoyment by Viacom of such rights and from breaching any of Tandem's obligations, whether expressed or implied, under the July 10, 1970 Agreement with respect to such rights. Without limiting the generality of the foregoing, for the duration of such rights, Tandem is permanently enjoined with respect to any episode or episodes of ALL IN THE FAMILY as to which Viacom has the rights described in paragraph 2 above from

(a) distributing or syndicating, or assisting, aiding, abetting, causing, authorizing or facilitating any person or entity other than plaintiffs to distribute or syndicate, any such episode or episodes;

(b) granting, selling, assigning, licensing, transferring or otherwise conveying, or assisting, aiding, abetting, causing, authorizing or facilitating any person or entity other than plaintiffs to grant, sell, assign, license, transfer, or otherwise convey, any right to distribute or syndicate any such episode or episodes;

(c) entering into any agreement or arrangement, including any modification of the July 10, 1970 Agreement, which would deprive Viacom in whole or in part of the fruits of its exclusive license;

(d) advertising or promoting, or assisting, aiding, abetting, causing, authorizing or facilitating any

person or entity other than plaintiffs to advertise or promote, Tandem or any person or entity other than plaintiffs as a holder of rights to distribute or syndicate any such episode or episodes;

(e) inducing or otherwise causing CBS not to deliver to Viacom, or any addressee designated by Viacom, any property, tangible or intangible, which is or may be necessary to enable Viacom or any of its subsidiaries to distribute or syndicate any such episode or episodes, including, without limitation, a color video tape high band, a copy of the script, a copy of the music cue sheet and promotional materials; and further provided that the right of Viacom to have deliveries made to an addressee designated by Viacom shall not be construed as a determination of whether Viacom has the right to assign, license, sublicense, delegate or otherwise convey or dispose of the right to distribute or syndicate ALL IN THE FAMILY; and

(f) interfering with plaintiffs' efforts to exercise the rights described in paragraph 2 above.

4. The provisions of this Final Judgment applicable to Tandem shall also apply to each of its officers, directors, agents, servants, employees, subsidiaries, privies, successors (by way of merger, consolidation, purchase of assets or otherwise), assigns, attorneys, all persons under the control, permission, or license, whether directly or indirectly, of Tandem or any of the foregoing, and to all persons in active concert or participation with Tandem or any of the foregoing.

5. When requested by Viacom, CBS and/or Tandem shall promptly deliver to Viacom, or any addressee des-

ignated by Viacom, all property, tangible or intangible (including, but not limited to, a color video tape high band, a copy of the script, a copy of the music cue sheet and a copy of any promotional materials), which the party requested now has or may hereafter acquire, with respect to any episode or episodes of ALL IN THE FAMILY as to which Viacom has the rights described in paragraph 2 above which is or in the future may be necessary to enable Viacom to exercise such rights; provided, however, that Viacom shall make payment to CBS for any property ordered from CBS in accordance with the provisions of the December 31, 1970 Agreement, and to Tandem for any property ordered from Tandem at a competitive rate.

6. Tandem shall pay to plaintiffs all taxable costs herein.

7. Jurisdiction of this cause is retained by this Court for the purposes of enforcing compliance herewith and the punishment of violations hereof and of enabling any party bound by this Final Judgment to apply to this Court for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the provisions of this Final Judgment.

Dated: New York, New York
April 15, 1974

MURRAY I. GURFEIN
United States District Judge

JUDGMENT ENTERED—4-17-74

RAYMOND F. BURGHARDT
Clerk

Notice of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 2941 (MIG)

VIACOM INTERNATIONAL INC., VIACOM LATINO AMERICANA INC., VIACOM JAPAN INC., VIACOM CANADA LIMITED, VIACOM VIDEO-AUDIO COMUNICACOES LIMITADA, VIACOM INTERNATIONAL LIMITED, VIACOM S. A. and VIACOM INTERNATIONAL PTY. LIMITED,

Plaintiffs,

against

TANDEM PRODUCTIONS, INC.,

Defendant.

SIRS:

PLEASE TAKE NOTICE that defendant Tandem Productions, Inc. hereby appeals to the United States Court of Appeals for the Second Circuit from the Final Judgment entered in this action on the 17th day of April, 1974 in the

office of the Clerk of this Court, and from each and every part as well as from the whole thereof.

Dated: New York, New York
May 6, 1974

SHEA GOULD CLIMENKO & KRAMER

By MARTIN I. SHELTON

A Member of the Firm
Attorneys for Defendant
Tandem Productions, Inc.
Office & P.O. Address
330 Madison Avenue
New York, New York
[212] 661-3200

To:

Hon. Raymond F. Burghardt, Clerk
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York

Hughes Hubbard & Reed
Attorneys for Plaintiffs
One Wall Street
New York, New York

EXCERPTS FROM DEPOSITION OF SAMUEL C. COHN

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the sealing, filing and certification of the within deposition be, and the same hereby are, waived; that the transcript may be signed before any Notary Public with the same force and effect as if signed before the Court.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, are reserved to the time of trial.

* * *

MR. PEARSALL: Pursuant to the subpoena duces tecum served upon Mr. Cohn in connection with this deposition, Mr. Cohn has produced a file entitled "Formerly Those Were The Days," and on the top cover of the file, "All In The Family 10-716B Tandem Productions CBS," containing a collection of documents relating generally to "All In The Family."

He has given me an opportunity to review very briefly the file, and it has been agreed between me and Mr. Cohn that I would paper-clip the documents in the file which I wish to have copies of and

he is going to provide those copies later this week.

So as to avoid the necessity of actually marking for identification the documents contained in this file, I am going to read identifications of each of these documents which have been paper-clipped for copying, and we will assign an exhibit identification number to each of these documents and they will be physically marked for identification when the copies are received from Mr. Cohn.

Please mark the following documents with the following identification numbers:

Copy of a telegram dated 6/22/70, from Dorothy, CREMANASSO to Sam Cohn.

MR. FERRARO: Off the record.

(Discussion off the record.)

(continued on page 5)

A letter dated 7/10/70, Perlberger to M. J. Farrar-Brown, will be Plaintiffs' Exhibit 79 for identification.

A letter dated 7/10/70, Lear to Hayes, will be Plaintiffs' Exhibit 80 for identification.

A letter dated July 13, 1970, from Perlberger to Farrar-Brown will be Plaintiffs' Exhibit 81 for identification.

A letter dated July 15, 1970, from Lear to Cohn, will be Plaintiffs' Exhibit 82 for identification.

Letter dated 7/16/70 from Farrar-Brown to Perlberger will be Plaintiffs' Exhibit 83 for identification.

A letter dated 7/20/70 from Perlberger to Cohn will be Plaintiffs' Exhibit 84 for identification.

A letter dated 7/20/70, Lear to Perlberger will be Plaintiffs' Exhibit 85 for identification.

A letter dated 5/28/70, Vertue to Cohn, will be Plaintiffs' Exhibit 86 for identification.

A letter dated July 24, 1970, Cohn to Perlberger, will be Plaintiffs' Exhibit 87 for identification.

identification.

Letter dated 4/30/71, Cohn to Yorkin, will be Plaintiffs' Exhibit 122 for identification.

Letter dated 4/23/71, Yorkin to Cohn, will be Plaintiffs' Exhibit 123 for identification.

Letter dated 4/28/71, Cohn to Yorkin, will be Plaintiffs' Exhibit 124 for identification.

Letter dated 4/30/71, Cohn to Yorkin, will be Plaintiffs' Exhibit 125 for identification.

Letter dated 5/14/71, Yorkin to Cohn, will be Plaintiffs' Exhibit 126 for identification.

Letter dated 6/9/71, Cohn to Block, will be Plaintiffs' Exhibit 127 for identification.

Letter dated 6/14/71, Perlberger to Lear, will be Plaintiffs' Exhibit 128 for identification.

Letter dated 6/16/71, Nelson to Perlberger, will be Plaintiffs' Exhibit 129 for identification.

Letter dated 6/17/71, Perlberger to Lear, will be Plaintiffs' Exhibit 130 for identification.

Letter dated 6/15/71, Block to Perlberger, will be Plaintiffs' Exhibit 131 for identification.

Letter dated 6/18/71, Perlberger to Block, will be Plaintiffs' Exhibit 132 for identification.

Letter dated 6/18/71, Perlberger to Lear, will

be Plaintiffs' Exhibit 133 for identification.

An affidavit to Plaintiffs' Exhibit 133 is a handwritten note which appears to be a note from Sheldon Perry to Mr. Cohn, and we will mark that Plaintiffs' Exhibit 133-A for identification.

Letter dated 4/2/71, Perlberger to Hayes, will be Plaintiffs' Exhibit 134 for identification.

Letter dated 7/6/71, with attached pages numbered 1, 4 and 4-A, fron Nelson to Perlberger, will be Plaintiffs' Exhibit 135 for identification.

Letter dated 7/8/71, Perlberger to Lear, will be Plaintiffs' Exhibit 136 for identification.

Letter, Perlberger to Cohn, dated 7/13/71, will be Plaintiffs' Exhibit 137 for identification.

Letter, Perlberger to Lear, dated 8/6/71, will be Plaintiffs' Exhibit 138 for identification.

Memorandum, Begelman to Rush, dated 11/8/71, will be Plaintiffs' Exhibit 139 for identification.

S A M U E L C. C O H N, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. PEARSALL:

Q Mr. Cohn, will you please state your full name for the record?

A Yes, sir.

Q Up to ten or twelve thousand dollars of pre-production costs?

A On an off-the-record basis.

Q Paragraph 16 says that the annual option date for pick-ups is April 1.

Can you tell us what an option date for pick-ups is?

A That means with respect to ordering programs for additional years, there is an April 1 outside option date.

Could we recess?

Q All right, fine.

(A recess was taken.)

Q I show you a document which has been marked Plaintiffs' Exhibit 84 for identification, which purports to be a letter to you from Mr. Perlberger, and ask whether you can identify that.

A Yes, sir.

Q That is a letter you received from Mr. Perlberger?

A Yes, sir.

Q In which, among other things, Mr. Perlberger states that he is anxiously looking forward to receiving a memorandum from you outlining the matter in which you

have concluded various points under discussion; is that correct?

A Yes, sir.

Q Now I show you a document which has been marked Plaintiffs' Exhibit 87 for identification, which purports to be a letter from you to Mr. Perlberger dated July 24, 1970 and ask whether you can identify that document.

A Yes, sir.

Q Is that your response to Mr. Perlberger's inquiry of July 20?

A Yes, sir.

Q That we just had reference to?

A Yes, it is.

Q And this is your confirmation that you closed the deal with CBS on the basis of your June 25, 1970 memo to Lear with two changes?

A Yes, sir.

Q Which you then proceed to explain; is that correct?

A That is correct.

Q I show you a letter which purports to be to you from Sheldon Perry, which is Plaintiff's Exhibit 96 for identification, and which is dated September 25, 1970,

EXCERPTS FROM DEPOSITION OF ROBERT DALY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., et al.,

Plaintiffs,

-against-

TANDEM PRODUCTIONS, INC.,

Defendant.

73 Civ. 2941 (M.I.G.)

Deposition of ROBERT DALY, taken by the Plaintiffs, pursuant to Notice and adjournment, on Tuesday, July 17, 1973, at the offices of Columbia Broadcasting System, Inc., 51 West 52nd Street, New York, New York, at 10:29 o'clock in the forenoon, before Walter Shapiro, Certified Shorthand Reporter and a Notary Public within and for the State of New York.

DOYLE REPORTING, INC.
CERTIFIED STENOTYPE REPORTERS
132 NASSAU STREET
NEW YORK, N. Y. 10038
TELEPHONE BARCLAY 7-6441

Appearances:

HUGHES HUBBARD & REED, ESQS.
Attorneys for Plaintiffs
One Wall Street
New York, New York

By: OTIS PRATT PEARSALL, ESQ.
-and-
ALLAN J. KASEN, ESQ.,
of Counsel

CRAVATH, SWAINE & MOORE, ESQS.
Attorneys for Columbia Broadcasting System
One Chase Manhattan Plaza
New York, New York

By: JAMES P. GLEASON, JR., ESQ.
-and-
STEVEN EDWARDS, ESQ.,
of Counsel

SILVERSTONE & ROSENTHAL, ESQS.
Attorneys for Defendant
250 West 57th Street
New York, New York

By: MORTIMER S. ROSENTHAL, ESQ.,
of Counsel
-and-

SHEA GOULD CLIMENKO & KRAMER, ESQS.
330 Madison Avenue
New York, New York

By: JOSEPH FERRARO, ESQ.,
of Counsel

* * *

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties

EXCERPTS FROM DEPOSITION OF JAMES WILLIAM HAYES

inadequate, he was having trouble -- just kind of general, "I am having trouble making ends meet," and he wanted a black family and subsequent thereto CBS made an allocation for the black family.

MR. PEARSALL: Mr. Shelton, may we have production of the January 1971 letter from Lear to Sipes?

MR. SHELTON: I don't have it.

MR. PEARSALL: Q Do you have a copy of it in your office?

A I remember it distinctly, and I will see if I can find it for you.

Q I show you two documents that have been marked Plaintiffs' Exhibits 84 and 87 for identification and ask whether or not you received copies of those documents.

A Yes.

Q I show you a copy of Plaintiffs' Exhibit 2 for identification, which is a couple of pages from Variety, Weekly Variety, of July 22, 1970, and ask you whether or not you read that article concerning "All In The Family" at the time it came out.

A No, I don't think I did. It must have been in Weekly Variety.

Q It was.

A I don't subscribe to that.

Q I show you a copy of Plaintiff's' Exhibit 18 for identification and ask whether or not you received that document?

A Yes, I did.

Q On the first page there is reference to the enclosure of a check for $8,969.11. Do you recall receiving that check?

A I personally wouldn't have received it in the mail. I

conversation?

A No. But the context of it was, "Don, will you please find out what is going on and have somebody give us a full report and tell them to stop doing things that are stupid."

And he said he would. And I think this bears it out.

Q Any other matters discussed in that telephone conversation with Mr. Sipes?

A I don't think so, not in that one. I think I made that call expressly for that purpose.

Q Then you reported the results of that call to Mr. Yorkin?

A Right.

Q I show you a copy of Defendant's Exhibit A for Identification, a letter from Mr. Perlberger to Mr. Block dated June 18, 1971, and ask whether a copy of that came to your attention at or about the date of that letter.

A Yes.

Q I show you a copy of Plaintiffs' Exhibit 62 for Identification, a letter from Mrs. Nelson to Mr. Perlberger, dated June 16, 1971, with an enclosure, and ask whether or not that came to your attention at or about the date of that letter.

A Yes.

Q I show you a copy of Plaintiffs' Exhibit 56 for Identification, a letter dated June 18, '71 from Mr. Perlberger to Mr. Lear and ask you whether or not a copy of that came to your attention at or about the time of the date of that letter.

A Yes.

Q I show you a copy of Plaintiffs' Exhibit 135 for

EXCERPTS FROM DEPOSITION OF MARTIN PERLBERGER

and United Artists.

Q Or the relationship between Tandem and Speight with respect to the United Artists deal?

A Yes.

Q You did have correspondence with other people?

A Yes.

Q Who?

A Malcolm Farrar-Brown, a solicitor in the firm of Richards, Butler & Co. in London, England.

Q Who was Mr. Farrar-Brown representing?

A Tandem and United Artists.

Q Who is Mr. Joe Adelman?

A He is an executive of the United Artists Corporation.

Q Who was Mr. Rodier?

A I beg pardon?

Q R-o-d-i-e-r.

A I don't recall that name. Where did you get that name?

Q I show you, Mr. Perlberger, a copy of Plaintiffs' Exhibit 79 for Identification and ask whether you can identify that letter.

A Yes.

Q What is that letter?

A A copy of a letter I wrote to Mr. Farrar-Brown, July 10, 1970.

Q In that letter there is in the first paragraph reference to a letter dated March 11, 1970 from Joe Adelman to you -- that would be, I guess, Farrar-Brown; isn't that correct?

A Yes.

Q Do you have a copy of that letter?

A It should be in my office files.

Q Can you tell me what the purpose of that letter was?

A The purpose of the March 11, 1970?

Q Yes.

A Not other than what I read in this exhibit.

Q Did it have to do with a description of the rights that United Artists wanted to obtain from Speight?

A Well, going by this first paragraph of this exhibit, it apparently contained the terms for the acquisition of television rights from Speight. Whether it also had something about rights I don't recall without looking into it.

Q Did it have to do with the acquisition of such rights by United Artists?

A No.

Q Take a look, for example, at the second paragraph of this letter and I ask you whether or not that refreshes your recollection. It appears that there was a final sentence in that letter which says, "Consequently paragraphs numbered 1, 2, 3 and 4 of the Joe Adelman letter should be ignored."

A Yes, sir.

Q Did part of the Adelman letter concern the acquisition of rights from Mr. Speight for motion picture theatrical rights?

A Concluding from what you just read, I would say yes.

Q At what point, using this March date that appears in Exhibit 79 to refresh your recollection, Mr. Perlberger, did Tandem close out its dealings with United Artists on the possibility of converting "All In The Family" for theatrical motion

A If I did, I forgot it. I didn't remember that. Do you have such a letter?

Q I show you Exhibit 84 for Identification, which purports to be a letter from you to Mr. Cohen. Are you looking at a copy of it?

MR. SHELTON: Yes, it is a copy. That is the copy that was produced by Mr. Cohen, I take it.

MR. PEARSALL: Yes.

Q I ask you whether or not that is a copy of a letter that you wrote to Mr. Cohen.

A Yes.

Q Did your telephone conversation in mid-July precede or was it subsequent to the date of Exhibit 84, which is July 20, 1970?

A It is quite likely that instead of the telephone conversation about the middle of July that this letter was the communication that I had reference to.

Q Are you fairly sure of that?

A No, I am not perfectly sure.

Q Then the next communication with Mr. Cohen was his response to your letter of July 20; isn't that correct?

A (No audible response.)

Q I show you a copy of Plaintiffs' Exhibit 87 for Identification.

A Yes, that is correct.

Q Subsequent to your receipt of the July 24 letter from Mr. Cohen to you, which you have just identified, was there any further contact between you and Mr. Cohen with respect

Tandem might have communicated to CBS would have come from communications between Tandem and me.

Q Will you disclose those communications?

MR. SHELTON: No.

MR. PEARSALL: You object on the ground of privilege?

MR. SHELTON: Yes.

MR. PEARSALL: Q Have you seen any writing addressed to CBS back at the time contemporaneous with Exhibit 87 advising CBS that so far as Tandem was concerned there was no deal with CBS on "All In The Family" as at that time?

A Which was 87? Is that the one I just saw?

MR. PARVER: Yes.

THE WITNESS: I have seen no such writing.

MR. PEARSALL: Q Did there come a time, Mr. Perlberger, when you read in the trade press of the deal between CBS and Tandem in respect to "All In The Family"?

A Not that I recall.

Q I show you Exhibit 2 for identification and ask whether or not that refreshes your recollection as to seeing an article in weekly Variety in which it was announced that a deal had been arranged between CBS and Tandem with respect to "All In The Family."

A I have no recollection as to whether or not I read this at or about the time it was published.

Q At some point, Mr. Perlberger, did you see comment in the press concerning the fact that CBS was planning to air "All In The Family" on its network?

A I don't remember.

Q I show you Exhibits 80 and 85, Plaintiffs' Exhibits

80 and 85 for identification. Exhibit 80 purports to be a letter to Mr. Hayes dated July 10, 1970 with a copy to you, and Exhibit 85 purports to be a letter from Mr. Lear to you.

I ask you whether or not you can identify those documents as being letters copies of which or the originals of which you received?

A No. 85 appears to be a letter the original of which I received; No. 80 wasn't addressed to me. I didn't receive the original of No. 80.

Q Did you receive a copy of it?

A Yes.

Q In Exhibit 80 Mr. Lear points out that Beryl, I take it that is a reference to Beryl Vertue, asks for more details about Tandem's deal with CBS, and in Exhibit 85, Mr. Lear's letter to you he points out that Beryl asks again in her letter to you for specific details of the CBS deal. Do you see that?

A Yes.

Q Do you recall whether or not specific details or indeed any details of the CBS deal were provided to Miss Virtue?

A To the best of my recollection and knowledge, such details were not furnished to Mrs. Vertue.

Q Did you become aware, Mr. Perlberger, at any time commencing after November or December 1970 of activity on the part of CMA to secure additional foreign syndication areas in which Tandem would have the right to syndicate and distribute "All In The Family"?

A Yes.

Q How did you become aware of that activity?

EXCERPTS FROM DEPOSITION OF SHELDON PERRY

BY MR. PEARSALL:

Q I have given to you, Mr. Perry, Plaintiffs' Exhibits 56 and 57 for identification; and at the same time I would like to hand you some handwritten notes which are Plaintiffs' Exhibits 58 for identification, and also a memorandum from you to Mr. Daly, which is Plaintiffs' Exhibit 59 for identification, that memorandum being dated July 1, 1971.

We can look at these things together, because I believe they constitute a sequence.

Let us start first with Plaintiffs' Exhibit 56, which is the letter to Mr. Lear from Mr. Perlberger.

A Yes.

Q You will see that the copy we are looking at appears to be the Sam Cohn copy, the copy that went to Sam Cohn -- there is a check mark next to his name.

A Right.

Q Can you tell us how you got this?

A To the best of my recollection, I believe that this letter was given to certain CBS personnel at a meeting trying to ultimately dispose of the open problems. I don't recall on what date, though.

Q I think I am going to be able to tell you.

A All right; perhaps you may.

EXCERPTS FROM DEPOSITION OF ELIZABETH WELLMAN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

VIACOM INTERNATIONAL, INC., et al.,

Plaintiffs,

-against-

TANDEM PRODUCTIONS, INC.,

Defendant.

----------x

73 Civ. 2941 (M.I.G.)

Deposition of ELIZABETH WELLMAN, taken by the Plaintiffs, pursuant to Notice and adjournment, on Monday, July 16, 1973, at the offices of Columbia Broadcasting System, Inc., Law Department, 36th Floor, 51 West 52nd Street, New York, New York, at 10:50 o'clock in the forenoon, before Walter Shapiro, Certified Shorthand Reporter and a Notary Public within and for the State of New York.

* * *

DOYLE REPORTING, INC.
CERTIFIED STENOTYPE REPORTERS
132 NASSAU STREET
NEW YORK, N. Y. 10038
TELEPHONE BARCLAY 7-6441

Appearances:

HUGHES HUBBARD & REED, ESQS.
Attorneys for Plaintiffs
One Wall Street
New York, New York

By: OTIS PRATT PEARSALL, ESQ.
-and-
ALLAN J. KASEN, ESQ.,
of Counsel

CRAVATH, SWAINE & MOORE, ESQS.
Attorneys for Columbia Broadcasting System
One Chase Manhattan Plaza
New York, New York

By: JAMES F. GLEASON, JR., ESQ.
-and-
STEVEN EDWARDS, ESQ.,
of Counsel

SILVERSTONE & ROSENTHAL, ESQS.
Attorneys for Defendant
250 West 57th Street
New York, New York

By: MORTIMER S. ROSENTHAL, ESQ.,
of Counsel

-and-

SHEA GOULD CLIMENKO & KRAMER, ESQS.
330 Madison Avenue
New York, New York

By: JOSEPH FERRARO, ESQ.
-and-
JOEL I. PAPERNIK, ESQ.,
of Counsel

* * *

EXCERPTS FROM DEPOSITION OF WILLARD BLOCK

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 9]

Q Mr. Block, by whom are you employed?

A Viacom International.

Q What is Viacom International?

A Viacom International is a company that is primarily engaged in two activities: one, the management of cable television systems, which I have nothing to do with, and, secondly, Viacom Enterprises, which is primarily a distribution company, a company engaged in the business of distributing television programs. That is the area in which I operate.

Q Is Viacom Enterprises a different corporation from Viacom International, Inc.?

A I believe it is a division. I don't think it is a separate corporation.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 10]

Q What is your position with Viacom International?

A I am President of Viacom Enterprises.

Q Viacom Enterprises?

A That is correct.

Q How long have you held that position?

A Since February 1972.

Q Were you employed by Viacom International and Viacom Enterprises prior to that time?

A Yes, sir.

Q What was your position prior to that time?

A Vice President and General Manager of Viacom Enterprises.

Q How long had you held that position?

A Since, I believe it was, March 1971.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 11]

Q When did Viacom commence business operations?

MR. PEARSALL: As a corporation now?

Q As a separate corporation.

MR. PEARSALL: As a corporation, as opposed to a division, or an operating group of CBS? Is that your point?

You realize, of course --

Q When did it commence operation separate from CBS?

A June 4, 1971.

Q By whom were you employed prior to March of 1971?

MR. PEARSALL: Prior to June or March?

MR. FERRARO: March. I think he said he was employed by Viacom the beginning of March.

Q Is that correct?

A That is correct, by Viacom and its predecessor company, CBS Enterprises.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 11]

Q With CBS Enterprises?

A What was CBS Enterprises?

Q Yes.

A It was a subsidiary -- I believe it was a subsidiary company within the Columbia Broadcasting System. It was a company primarily engaged in the distribution of television programs, engaged in the exploitation of ancillary rights.

Q You mean, ancillary rights for television programs?

A Right.

Q When you refer to ancillary rights of television programs, what do you mean by that?

A I mean primarily the domestic rerun distribution of programs after their network run is completed, the foreign sale of such programs, normally contemporary with network broadcast, and from time to time various rights such as we call merchandising and licensing rights.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 12]

Q How long were you employed by CBS Enterprises?

A If memory serves me, I began my employ in April of 1957.

Q That was with CBS Enterprises?

A It was operating at that time under a different name, but it was essentially the same group.

Q During the year 1970, what were your duties at CBS Enterprises?

A I was Vice President, International Sales, for CBS Enterprises.

Q And as Vice President of International Sales, what did your job consist of?

A Mine was the management responsibility for the profitable exploitation of the distribution rights that we had in markets outside of the United States.

Q When you were employed by Viacom as Vice President and General Manager in 1971, what were your duties in that job?

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 13]

A They included --

MR. PEARSALL: May I hear the question, please?

(The reporter read the pending question.)

MR. PEARSALL: This was after March of 1971?

MR. FERRARO: After March of 1971.

A My responsibilities, the primary responsibility was for the ~~distrubiton~~ DISTRIBUTION of programs, domestic and international, and the merchandising and licensing exploitation of such rights as we might have had.

* * * *

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 14]

Q You say that you had management responsibility for the distribution of domestic and foreign programs or programs for domestic and foreign exhibition; is that correct?

A Well, mine was a management responsibility for the activities of CBS Enterprises at the time, or Viacom Enterprises at the time. Our business was the business of distributing television programs in the United States, outside the United States. Our business was the exploitation of ancillary rights, merchandising, licensing and all of those activities, the administration, sales, fell under my responsibility.

Q What are your duties now as president of Viacom Enterprises?

A Essentially the same as my duties when I was vice president and general manager, with the exception that we have broadened some of our activities which now include

* * * *

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 94]

sort of a direct arrangement. I don't believe that -- I don't recall Mr. Sipes making a specific suggestion as to what we should do. But he certainly did suggest that I get together with the Tandem people to see if we wouldn't work something out. He was playing the role of a marriage broker, trying to get us together.

Q Who initiated the meeting that took place around the end of July in California between you and Mr. Yorkin and the other people you have mentioned?

A My best recollection is that I asked Irv Wilson to set it up with Bud Yorkin, and I believe I simultaneously called Bill Hayes; but I'm not certain.

Q At this meeting that you had in California, was there any discussion about making a direct agreement between Tandem and Viacom?

A Yes.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 95]

Q Do you recall what was said about that?

A First of all, there was some discussion about what their position was with respect to the rights, and what our position was. We all agreed that we should try and go forward to see if, without prejudicing our respective positions, we might be able to find some basis for getting together.

The subject of discussion was international distribution.

Q Did you make any kind of proposal to the people from Tandem with respect to what kind of a direct deal you were willing to make?

MR. PEARSALL: At that meeting?

Q At that meeting, yes.

A We discussed a number of business problems, but we left the meeting with the idea that I would get back, or our company would get back to them with a proposal.

So I did not make a proposal at the meeting. But there were various business items that were discussed.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 95]

Q Do you recall whether there was any discussion at that meeting about what had been the CBS Enterprises standard distribution agreement.

MR. PEARSALL: Are you talking about the document enclosed with Exhibit J?

MR. FERRARO: Right.

MR. PEARSALL: Do you know the document to which counsel refers?

Q I hand you a copy of Exhibit J with the document attached.

A I don't recall a specific discussion about the document. I do recall, for example, a discussion as to what our standard fees were for international

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 112]

indicated an interest in the major markets, as I told you, that it would be impractical to make this an across-the-board item. And that was the -- and the operative phrase was, you know, "whenever practicable."

This was not, however, something that we ever really agreed to. I believe that Mr. Irwin was laying out here something that we might have agreed to had we ever concluded an arrangement. But I am not aware of the fact that we ever got there.

And so we continued to operate in the absence of any arrangement with us along the lines that we had operated in the past.

Q Did there ever come a time when Mr. Irwin told you that his negotiations with Tandem had broken down and that Viacom and Tandem could not reach a direct agreement?

A I believe by -- I recall that by December 1971 we had never really been able to conclude any arrangements, and we simply continued to go forward. We were distributing the program internationally.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 112]

Q My question is: Did Mr. Irwin ever tell you that negotiations had broken off?

A I don't recall Mr. Irwin specifically saying that negotiations had broken off. But I do recall that we had come to an impasse on a number of key items.

Q Did Mr. Irwin tell you that you had come to an impasse?

A I don't recall whether he told me that we had come to an impasse.

Q But you were not negotiating with Tandem yourself, were you?

A There was a great deal of confusion at the time. Everybody was talking to everybody. I had a number of conversations through all of the months with Mr. Perlberger. I believe there were conversations from time to time with Mr. Yorkin. We had conversations with Mr. Hayes. It was very difficult to determine sometimes whom you were dealing with at Tandem.

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BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 118]

Q Do you recall whether anyone in your organization advised you that Tandem had requested a statement of all gross receipts in connection with "All in the Family" at or around this time?

MR. PEARSALL: What time?

MR. FERRARO: February 18, 1972.

A Mr. Ferraro, we had an ongoing dialogue with Tandem with respect to information that they requested, and I believe you will find a series of letters going back and forth wherein they would ask, as time went on, for more detailed information. We began providing more detailed information, far more than we provide to other people, in an attempt to accommodate them. But it is difficult for me to pick out one particular piece of paper and know whether or not we responded -- one particular letter -- and know whether we responded specifically to that letter.

Q Did you, yourself, take part in this, what

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 119]

you referred to as an ongoing dialogue with Tandem?

A I was involved in a number of discussions with respect to the information that they were requesting, yes.

Q With whom did you have these discussions?

A You mean within or without?

Q First start with within Viacom.

A I had it with our financial people, Fred Gilson, and our Business Affairs Department.

* * * *

Q When did these conversations that you had with people within Viacom with respect to information that was being requested by Tandem start, if you can recall?

A They started as early as, oh, in the summer of -- summer-fall 1971. We had some initially, and I think we discussed, earlier in this deposition, requests for information which had come in from Tandem, initially from Bud Yorkin. So I don't know exactly what you are

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 120]

referring to.

Q I hand you a letter that has been marked Exhibit O and ask you whether you recall whether you saw it or a copy of that around March 10, 1972, its date?

A I don't specifically recall this letter, but I can identify it as a document that is typical of the kind of information -- a document containing information that we were supplying to Tandem in accordance with various requests that were made.

You will notice, for example, in the last paragraph, per the request for notice when appropriate when there was an opportunity to give such, that we talked about the fact that there were pending sales in Thailand and Sweden. It is, you know, one of many attempts to satisfy the information requirements that were being made to us.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 121]

Q I call your attention, Mr. Block, to the fourth paragraph of this letter, which says, "In accordance with our agreement, we will furnish you with statements and payments within 60 days after the end of each calendar quarter."

Do you know what agreement Mr. Irwin is referring to there?

* * * *

Q Prior to December of 1971, had you been accounting to CBS --

A Yes, sir.

Q -- for "All in the Family" sales?

A Yes, sir.

Q Specifically, what kinds of information had you been giving to CBS about sales of "All in the Family"?

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 122]

A I would suggest that there are better -- there are people more qualified to comment on precisely the kind of information.

MR. PEARSALL: Tell him whatever you know.

A It would be cash receipts.

MR. PEARSALL: Do you know? Either you know or you do not know.

* * * *

[EBT p. 123]

A I had never seen a reporting on "All in the Family" to CBS, so I cannot comment on that.

Q Do you know whether any reportings were made?

A To the best of my knowledge, reportings were made.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 123]

Q You mentioned before a working understanding with respect to providing information to Viacom. Is that understanding, so far as you know, contained in any writing anywhere?

A I believe that we incorporated -- I don't recall a specific document outlining a procedure. I don't believe there is such a document. But I believe by common practice and by virtue of prior discussions, one was arrived at. I know that there were discussions that took place as to how we would report. I can remember specific discussions with Mr. Perlberger where he thought that the reportings that we were making were not as complete as he might like them, and I can recall that we, on successive occasions, tried to give him more complete reports, reports that would be more acceptable to him.

* * * *

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 127]

Q Now I show you a document marked Exhibit S for identification, dated April 17, 1972, and ask you if you recognize that as a copy of a letter that you sent to Mr. Perlberger?

A I recall sending this letter.

Q The letter refers to a meeting that you had with Mr. Perlberger.

A Yes.

* * * *

[EBT p. 128]

Q Did you, at this meeting, have any discussions with respect to "All in the Family"?

A Yes, we did.

Q What was said about "All in the Family" at this meeting?

A We were talking about the detail of reporting, and trying to compare the information that we were attempting to provide to Tandem as against the detail of other information that might be forthcoming from other distributors. And if memory serves me, Mr. Perlberger pulled out an example of the kind of record

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 129]

that he was getting from someone else on another subject. That was essentially what we got into with respect to "All in the Family."

* * * *

Q I hand you a copy of a letter dated July 12, 1972, marked Exhibit V for identification, and ask you if you recall writing that letter to Mr. Perlberger?

A Yes, I recall writing this letter.

Q In the first paragraph of this letter you say that you are going on record in replying to Mr. Perlberger's statement that Tandem is "going to cease furnishing additional episodes or tapes for distribution

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 130]

by Viacom."

Is that statement that you are replying to the one which is contained in this June 30, 1972 letter that has previously been marked Exhibit U?

A Yes.

* * * *

Q In your discussions with people from Tandem with respect to or looking toward a direct deal between Viacom and Tandem, did the subject of domestic syndication rights come up?

A At what point?

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 131]

Q In your original discussions with Tandem and in Mr. Irwin's discussions with Tandem pursuant to which drafts were prepared and exchanged, were those discussions limited to foreign syndication rights?

A You are talking about conversations and drafts in 1971?

Q Right.

A We were only talking about international distribution.

* * * *

[EBT p. 155]

Q Exhibit DD for identification is a Xerox copy of a document which says at the top, "Follow-up - February 9 re: 'All in the Family,' domestic syndication rights."

Have you ever seen that document before, Mr. Block?

A Yes, I have seen this document.

Q Do you know who prepared it?

A I believe it was prepared by Art Zeiger.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 156]

Q The second paragraph of this document says: "Since Tandem has made a deal with Viacom for only foreign rights" -- then it goes on with respect to domestic rights.

Do you know what deal he is referring to?

A It is talking about the accounting arrangements, the fact that we were talking about -- I believe it is just the accounting arrangements that we had made between -- that we had discussed with Tandem.

I think that the documents that you show me here, this of Irwin's of December 17, mine to him of January 4, this other item is --

Q When you say "other item," you are referring to DD?

A DD, all symptomatic of the confusion that existed with respect to what was going on, because it became apparent that neither CBS nor Tandem had been telling Viacom all that was going on. We found ourselves pretty much operating in the dark.

BLOCK DEPOSITION

(Admitted in Evidence, Trial Transcript p. 644)

[EBT p. 156]

Q Did Viacom ever make a proposal to Tandem with respect to the domestic syndication rights to "All in the Family"?

A I had a meeting with Mr. Hayes in, I believe, September of 1972 where I made a suggestion to him

EXCERPTS FROM DEPOSITION OF NORMAN M. LEAR

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p.627)

[EBT p.4]

Q Mr. Lear, would you state your full name?

A Norman M., Milton, Lear.

Q Where do you reside, Mr. Lear?

A 255 Chadbourne Avenue, Los Angeles 90049.

Q Mr. Lear, do you have any connection with Tandem Productions, Inc.?

A I am a partner and executive vice president.

Q Tandem Productions is a corporation, isn't that correct?

A Yes.

Q So when you say you are a partner, does that mean that you are a 50 percent stockholder with somebody else?

A Bud Yorkin and I own Tandem Productions.

Q 50-50?

A Right.

* * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.5]

Q When was Tandem Productions organized, approximately?

A I believe it was 1960.

Q Have you been executive vice president of Tandem throughout the entire period since then?

A No. At one time I was vice president, then I swung all the way to executive vice president.

Q Who is the president?

A The president was -- Who is the president?

Q Today, yes.

A Jerry Perenchio.

Q How long has he been president?

A For some seven months.

Q Who was president befcre that?

A Bud Yorkin.

Q For how long was Mr. Yorkin president?

A For all the years between Mr. Perenchio's installation and the beginning of the company.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.5]

Q Mr. Yorkin's full name is what?

A Alan Bud Yorkin.

Q When did the switch in your position from vice president to executive vice president occur, if you can recall?

A At the time that Mr. Perenchio joined our firm.

Q What is Mr. Yorkin's position with Tandem now, if any?

A I believe he is also executive vice president. He may also be Chairman of the Board. I don't know.

Q You are a director, I take it, Mr. Lear?

* * * *

[EBT p.6]

A Yes.

Q And so is Mr. Yorkin?

A Yes.

Q Who are the other directors?

A Mr. Perenchio was a director, I believe -- He is not. I am afraid I don't know who all the directors are.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.6]

Q Who are the other officers of Tandem at the present time?

A I believe Mr. Hayes is secretary-treasurer. That is J. William Hayes. I have covered two vice presidents.

Q You have covered the president and two executive vice presidents.

A I don't know if there are any more officers.

Q How long has Mr. Hayes been secretary-treasurer of the corporation?

A For, I believe -- He has a company called Executive Business Management. They have been handling the business affairs of Tandem and I think it has been about six years.

Q The Executive Business Management Company has been handling the business side of Tandem for six years?

A That's right.

Q And at the same time has Mr. Hayes held the position of secretary-treasurer during this six-year period?

A To the best of my knowledge. Mr. Harold Berkowitz, I think, is also a director of the company and a member of this law firm.

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.48]

Q Did Tandem enter into an agreement with ABC for the Americanized version of "Till Death Us Do Part"?

A Yes.

Q Was that a development agreement of some kind whereby ABC would finance the development of the script and the pilot and this kind of thing?

A I don't recall the exact nature of the agreement. But it resulted in a pilot.

* * * *

Q Can you tell us approximately when that agreement was entered into?

A Well, approximately -- I can't. Sometimes agreements are signed after the fact, even after the pilot. I don't know when that agreement was made.

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.71]

MR. PEARSALL: Q Mr. Lear, you indicated that you discussed with Mr. Yorkin before he went to New York the possibility of making a contact with CBS. Do you recall that testimony?

A Yes.

Q What were the facts that led to your discussion with Mr. Yorkin as to taking that course of action?

A He was going to New York and we were talking about what business could be conducted while he was there.

Q Why did you suddenly decide to approach another network? You were in the midst of talking to United Artists, weren't you, about a theatrical presentation of this?

A Because it always -- Because it had been considered from the beginning as a television series and it was in a whole new management at CBS with whom this could be discussed that obviously had never heard of it or seen it.

Q To your knowledge did Mr. Cohen go over to CBS and participate with Mr. Dann in the screening, the initial screening, of this show at CBS?

A I don't know if he was there or not.

Q Did he make a report to you concerning the screenings of the tape at CBS?

A Yes.

Q Did he make the report directly to you, or who did he

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.72]

make it to?

A He made it to me or to Bud, or to both.

Q What did he say?

A Simply that it had been seen on every floor and everybody was excited about it and they wanted to talk to me about doing a series or doing another pilot.

* * * *

Q Did he report to you that CBS was interested and wanted to talk to him?

A Yes.

Q And did he do that report in writing or was that oral on the telephone?

A As I recall, it was on the phone.

Q What was your response, if you recall, to Mr. Cohen? Did you ask him to take any action?

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.73]

A My response was "Swell."

Q Did you ask him to take any action?

A I don't believe so. I don't know whether it was in the same call or some calls later. I really don't remember how I learned. But I knew that the new president, Bob Wood, was going to be here in California and the head of the Program Practices Department, William Tankersley, and they wished to sit with me and discuss the possibility of doing the show.

* * * *

[EBT p.76]

Q Is the first contact that you personally had with CBS executives in connection with "All In The Family" the meeting that you have had reference to here with Wood and Tankersley?

A Yes.

Q Prior to that meeting had there been any other meeting by anybody on behalf of Tandem with anybody on behalf of CBS, other than the meeting you have adverted to earlier by Yorkin with Dann in connection with "All In The Family"?

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.76]

A Well, following the screenings in New York it's possible that Sam Cohen had talked with Dann, Wood, Silverman, any combination of that group. And it is likely that he did. And out of that -- I mean that is how I learned that they wished to meet.

Q Where did the meeting occur?

A In Perry Lafferty's office here at CBS.

Q Who is Perry Lafferty?

A He is the California vice president in charge of Programming.

Q Who was present?

A Mr. Lafferty, Mr. Wood, Mr. Tankersley and myself.

Q What is your recollection of the conversation that occurred at that meeting?

A Mr. Tankersley and Mr. Wood were, I believe, trying to feel me out in terms of how it would be to work with me in the future from a creative standpoint. They knew that the series could be controversial, was different, and I think they were trying to ascertain for their own benefit what kind of reasonable

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LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.77]

or unreasonable individual they might be dealing with. And so we talked philosophically, in quotes, how I would approach the series and how we would approach a relationship together if they went with the series. Also discussed was as to whether we should do another pilot. And I refused to do another pilot. Either we were going to go on the air this time or not.

* * * *

Q At that meeting with Mr. Wood did he indicate to you that he had seen the pilot?

A Yes.

Q Did he indicate to you that he was enthusiastic about it?

A Yes, he did.

Q Did he indicate to you that he had reached a tentative decision to buy the program?

A No. That is why we were discussing the possibility of a pilot.

Q Did he indicate to you that he was interested in the program as a possible midseason replacement for January 1971?

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.78]

A Not at that meeting.

Q Was it agreed at that meeting that you and he would get your respective business people together to make a deal?

A I don't think that we reached that agreement at that meeting. I recall having made it clear that I would not do another pilot. I recall Mr. Lafferty feeling it would be foolish to do another pilot and so advising Mr. Wood. And, as I recall, that meeting ended with their thinking about it.

Q Was it agreed at that meeting that you would have further meetings with the Tankersley outfit? What was Tankersley's job?

A He was the vice president in charge of Program Practices.

Q Was it concluded at that meeting that you would have a further meeting with the Program Practices people in an attempt to see whether or not guidelines could be worked out?

A No. I think that meeting satisfied everyone and we adjourned that meeting with their taking into consideration whether they would actually go forward and order 13 programs or not.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p.78]

Q The ordering of 13 programs would have reference to half a season?

A Yes.

Q Which would tie into the idea of a midseason replacement; isn't that correct?

A I said "Yes" too quickly. It could also have reference to the start of a season, because at the beginning of a new series without an important star there is seldom more than 13

* * * *

[EBT p.79]

episodes ordered.

Q What discussions were there with respect to such nitty-gritty matters as numbers of episodes --

A No discussions.

Q -- and framework of a possible deal?

A No discussion.

Q Thirteen episodes were mentioned specifically?

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 79]

A No, they weren't. Thirteen is a figure I know. And we were not talking about a pilot because I didn't want to make another pilot. We had to be talking about whatever minimal order they would give. We didn't discuss numbers.

Q How was it left at the end of that meeting as to what Tandem was going to do, what CBS was going to do?

A CBS was going to think about whether they wanted to do the series.

Q Was there anything left to think about on your end of the transaction at that point?

A No.

* * * *

[EBT p. 83]

A That is quite possibly the way I heard it. But I don't specifically recollect.

Q Mr. Lear, I show you two documents that have been marked Plaintiffs' Exhibits 89 and 91 for Identification. The first is a letter from Mr. Downer to you dated August 17, 1970, and the second is a letter from you to Mr. Downer dated September 15, 1970. Would you take a look at those two documents and tell me whether or not you can identify Exhibit 89 as a letter you received from Mr. Downer and Exhibit 91 is a letter you wrote to Mr. Downer.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 83]

A Yes, I recognize that.

Q Now looking at Exhibit 89 for Identification, there is reference in there, is there not, to a meeting in Perry's office on May 8 which had to do with certain specific program practices; is that correct?

A Yes.

Q Do you recall having a meeting with Mr. Downer in Mr. Lafferty's office?

A I don't recall the specific meeting. There were a great many such meetings, I gather, by this time.

Q That would be May 8, 1970; isn't that correct?

A Yes.

Q With reference to your letter to Mr. Downer of September 15, in the bottom paragraph of that letter, indeed the last line of that letter, there is a reference to a May 5 meeting. Do you see that?

A Yes.

Q And it talks about deletions agreed upon at a May 5 meeting.

A Right.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 84]

Q Do you recall having had a meeting with Mr. Downer in which deletions were agreed upon?

A No, I don't.

Q Mr. Downer was not present, was he, at the Wood meeting that you described a little bit earlier?

A He could have been, but it isn't my recollection that he was.

Q This is more likely a meeting that would have taken place subsequent to your meeting with Wood?

A Yes.

Q I really show these to you in an attempt here to do what we can to refresh your recollection as to the time frame. And I take it it would be your recollection now, as refreshed by these documents, that the meeting with Mr. Wood must have occurred some time, how much time we don't know, but some time before May 5?

A Yes.

Q Were any notes made with respect to these deletions which were agreed upon at the May 5 meeting? In other words, was this deletion process that you refer to here in your letter, which is Exhibit 91 for Identification, recorded in writing in

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 89]

Q Well now, Mr. Lear, before lunch at some point you indicated that following the meeting that you had with Mr. Wood, which by reference to a document we were able to place as having occurred prior to May 5th, 1970, you learned possibly through Mr. Cohen or possibly otherwise that CBS was ready to sit down and negotiate a deal. Do you recall that?

A Yes.

Q Now, do you recall approximately when that would have been in relation to the Wood meeting in terms of weeks following or days following?

A I don't, except that I think it was shortly thereafter.

* * * *

[EBT p. 91]

Q As the negotiations progressed did Mr. Cohen make any reports of his contact with CBS either to you directly or to Mr. Yorkin directly, to the best of your recollection?

A To the best of my recollection, it was directly.

Q Did you hear of reports which he made to anyone else?

A Yes.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 91]

Q How did you hear of those reports?

A Probably Bill Hayes would talk about how they were coming.

Q What is your recollection of what you were told in this period immediately following the initiation of these business negotiations?

A I don't remember anything beyond a couple of meetings, which probably took place at the conclusion of negotiations, or towards the conclusion. I don't really remember any early back-and-forth talk about this or that. But towards the end of negotiations I recall a couple of meetings where terms were discussed.

* * * *

[EBT p. 96]

MR. PEARSALL: Q At the time, Mr. Lear, that these negotiations with CBS commenced did you have any information that CBS was interested in the possibility of putting "All In The Family" on the air in January 1971 as a mid-season replacement?

A Yes, I think that was discussed.

Q When was that discussed?

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 96]

A It would have been after -- between -- No. It would have been after whatever meeting took place following that meeting in the May 5th area that culminated in an agreement to go ahead.

Q Do you recall whether Mr. Cohen advised you that CBS was anxious to get down to negotiations and to complete them as as quickly as possible in light of their desire or their possible desire to put the show on the air as a mid-season replacement in January 1971?

A I seem to recall something of that nature.

Q Do you recall any particular targets or goals or specifics which were given to Mr. Cohen as things to be achieved in the negotiation with CBS?

A At the outset of any talks he had with CBS?

Q Yes.

A I don't recall.

Q Or as they progressed?

A I personally don't recall any.

Q Do you recall whether Mr. Hayes or anybody else gave him guidelines of this kind?

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 97]

A Whether he was given guidelines or reported back as to what he thought the deal might be and then was instructed to better this or try to achieve that, I don't know.

Q Do you know whether or not he was using the agreement with ABC as the model for his negotiation with CBS?

A I have no knowledge of that at all.

Q Do you know whether Hayes or anyone else, including yourself, instructed to Cohen to seek any particular changes from the ABC deal?

A I don't .

* * * *

[EBT p. 99]

Q Now, do you recall coming to New York toward the end of June 1970 either with Mr. Hayes or maybe you met Mr. Hayes in New York, but anyway coming together with Mr. Hayes to New York for negotiation with CBS on this "All In The Family" matter?

A I do recall being in New York. Whether I specifically was there for that purpose or not I don't remember. But I remember being involved in a small way with them. I think I was there for

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 100]

a number of purposes related to this, some that had to do with content.

Q We will get into all of that, but I am just trying to fix the approximate time. Do you recall that it was approximately toward the end of June 1970?

A I accept your date.

Q We have some documents that we can look at as we go along which I think will help you on the date.

Can you tell us the circumstances, factual circumstances which brought Mr. Hayes to New York for that negotiation? How did it come about?

A I don't exactly know how it came about. I assume he was there in the final stages of this negotiation to being about the end of the negotiation and the contract. I had relatively little to do with any of that.

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 102]

Q Now, did you engage while you were in New York on matters relating to "All In The Family"?

A Yes.

Q I think you indicated in your previous testimony that you were in New York on a number of different matters connected with "All In The Family." Can you tell us what they were?

MR. SHELTON: I object to that. I don't think he said he was in New York on a number of different matters connected with "All In The Family."

MR. PEARSALL: All right, our recollections are different.

THE WITNESS: In any event, I discussed the content with Bob Wood and with Richard Jenks. That was a good part of my "All In The Family" discussions while I was in New York. I think I remember correctly that the reason it took place at this time was this preview of "Cold Turkey."

MR. PEARSALL: Q Do you recall whether Mr. Hayes had a meeting while he was in New York with Mr. Cohen and Mr. Sipes at CBS and perhaps with others, too, at CBS on or about June 24th, 1970?

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 103]

A Again, I can't fix dates. I will accept that date. And I do know that he was there and discussing "All In The Family" with Don Sipes. What part Cohen played in that, I know he played a part. I don't know in what meetings. I was not a part of those meetings.

I think at one meeting I just stuck my head in to say hello to everybody but I don't remember being in any substantial part of any negotiating meeting on that trip or any other trip.

Q Now, following that meeting, not necessarily immediately following, or at some point in the next couple of days did you happen to be with Mr. Sipes and Mr. Cohen and perhaps Mr. Hayes in the Ground Floor Cafe which is a cafe, as I understand it, in the CBS Building?

A Yes.

Q Do you recall what the circumstances which brought you all together in the Ground Floor Cafe were?

A As I recall, they had concluded or about concluded negotiations for the making of 13 episodes and there was something left to discuss or something they wanted to know from me or some reaction that I would have to something, and that's why we were

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 104]

talking. And to say congratulations to each other for making a deal. I don't remember what it was.

Q You don't recall the particular points?

A I don't recall the particular points, no.

* * * *

Q Do you recall whether or not there was any discussion of syndication rights in the Ground Floor Cafe?

A I don't recall any discussion of syndication rights.

Q Either at the Ground Floor Cafe or otherwise?

A Or otherwise. I don't recall any.

Q Did you have any conversations with Mr. Cohen prior to this meeting at the Ground Floor Cafe or this conversation at the Ground Floor Cafe concerning syndication rights?

A Nobody would have discussed those things with me, because I never discuss those things. In terms of Silverman and Sipes and anyone else, I am not a hard-line negotiator or a negotiator of any kind and nobody would have been sitting around discussing those things with me. If we were talking about anything, we would have been talking about content and about the things that I cared a great deal about. Syndication, by the way, at this point or any other point in these negotiations was a foregone conclusion.

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 108]

Q You didn't think you could do everything, and that would have to be the one that would be eliminated?

A Right.

Q Anything else?

A I can't think of anything else. There could have been, but I have no specific recollection.

I don't remember knowing whether the package price was a good price or a bad price, whether I was involved in saying it was or wasn't on the basis of what I knew at the time.

Q As a consequence of the telephone conversation that you adverted to earlier but were not permitted to testify to, did Mr. Cohen take any action of any kind?

A I think that that conversation resulted in either the exclusion or certainly the dimunition of any of CBS' involvement in merchandising.

* * * *

Q Going back, then, to while you were still in New York before you came back to California, did you have any further meetings -- I think you mentioned Wood and Jenks -- with CBS

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 109]

people apart from this one meeting that occurred at the Ground Floor Cafe at which Sipes was present?

A I don't believe I did.

Q Well, you had a meeting with Wood and Jenks you believe?

A I know I had a meeting with Jenks, and I believe I had a -- I remember specifically the meeting with Jenks because it's the only time I ever had one.

* * * *

Q Was this subsequent to the business meeting that Hayes and Cohen had had with Sipes or before it, do you recall?

A I don't recall.

Q In any event, you went to see Mr. Jenks?

A Yes.

Q Do you have any recollection of your meeting with Mr. Jenks?

A I do.

Q Was anyone else present?

A No.

Q Could you tell us what your recollection is of your

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 110]

meeting with Mr. Jenks?

A The meeting specifically related to his feelings about content and his desire to know more about what I felt the show would be about. I think he may have discussed with me the thought of having a disclaimer at the beginning of each episode for a while.

Q What kind of a disclaimer would that be?

A It was a disclaimer that existed for the first six or seven or eight shows just simply telling people that this was a program of an unusual nature. I don't recall the exact wording of it.

Q What else was discussed?

A That's all. It was strictly related to content.

Q Did he ask you whether or not it would be possible to construct "All In The Family" in such a way as to present a balanced view of the opposing social and political philosophies?

A That was part of the discussion, yes.

Q Was the result that "All In The Family" could be constructed in a way that would present a balanced view?

A It was my intent that it would, and I told him that.

Q You told him that?

A Yes.

Q He appeared to accept that?

A Yes.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 116]

Q Do you recall now that you were aware of it at that time?

A I don't know quite what is happening semantically here.

Q There is nothing happening semantically, Mr. Lear. I am simply trying to find out whether you now recall that there was a public announcement of the deal or the transaction, whatever you want to call it, in early July of 1970, and I am showing you that document, Exhibit 2, to help refresh your recollection.

A It refreshes me no end.

Q So you do recall that there was a public announcement at that time?

A Yes.

Q Mr. Lear, I show you Plaintiff's Exhibit 8 for identification, which purports to be a letter from Beryl Vertue to you dated July 7, 1970 and ask whether you can, after looking at that, tell us whether you recall having received that letter.

MR. SHELTON: Off the record.

(A discussion was had off the record.)

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 116]

MR. PEARSALL: Q Referring to the first paragraph of that letter Miss Vertue refers to having received your cable telling her that the deal is almost finalized with CBS. Do you see that part?

A Yes.

Q Did you send Miss Vertue a cable to that effect?

A I never knew the lady to lie. I am sure I sent her the cable.

* * * *

[EBT p. 117]

MR. PEARSALL: Q What was your purpose in getting in touch with Miss Vertue?

A Miss Vertue and I had become good friends, and I am sure I would let her know in the most expedient way some news that would have been of considerable interest to her.

Q What news was that?

A That the CBS deal was almost finalized.

Q Why would that be of interest to her?

A Because she represented Johnny Speight, and it was her property she was selling to the American market.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p.627)

[EBT p. 128]

MR. PEARSALL: Q I show you a letter dated July 24, 1970, which has been marked Plaintiffs' Exhibit 87 for identification, from Mr. Cohen to Mr. Perlberger with copies shown to you, Yorkin, Hayes, Wilson and Rush, and ask whether or not you can identify that document.

* * * *

MR. PEARSALL: Q I just want to know whether you can recall receiving the letter.

A I don't recall specifically receiving it, no.

You know, I don't know quite what these answers mean. I don't deny receiving the letter. When I say "No," I assume you are not asking me if I recall opening an envelope and reading the letter.

Q You agree that you received the document, although you don't have a present recollection of the process of receiving it?

A That's right.

Q We have a meeting of the minds.

A Good.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 129]

Q Can you tell us who Herman Rush is?

A Herman Rush was an executive at CMA.

Q This letter has reference to a memorandum to Norman Lear of June 25, 1970, a copy of which we have seen before, which has been marked as Exhibit 76, and it indicates that there were two changes. One is the merchandising change and the other has to do with $16,000.

A Right.

Q Does that refresh your recollection as to the $16,000 item we discussed before and as to which you had no recollection at that time?

A No, I don't recall that at all.

Q Do you recall that the resolution --

A It also clarifies the music rates.

Q Yes, it does. Does this refresh your recollection as to how the merchandising question was resolved with CBS?

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 130]

A Yes.

Q And the description of it here in Item 1 of Mr. Cohen's letter accords with your recollection as to how that was resolved?

A I had no recollection, except that I know that we made a point there. I see this is the way it was resolved.

Q Did you in July, having received this letter, advise CBS in any way that in fact CBS did not have a deal with Tandem?

A Would you repeat that?

Q Did you in July or August, having received this letter, take any steps to advise CBS that Tandem did not have a deal with CBS?

A No, I don't recall -- Notifying CBS that we did not have a deal?

Q That's correct. This letter, Mr. Lear, as you will see in the opening couple of lines confirms that the deal with CBS was closed on a certain basis. And my question to you is did you go back to CBS either directly or through any intermediaries and advise them that in fact a deal on this basis had not been made?

A Not to my recollection.

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 133]

Q Now, Mr. Lear, in connection with the production of "All In The Family" once the decision was taken to proceed, what arrangements were necessary to put together the actual mechanics for the production of the show?

A I had to find a director, I had to find some help in the writing, I had to cast two young people again, I had to find an associate producer who would handle all of the production end of the business -- for the production, that is.

Q Those were the principal tasks?

A Yes.

Q At what point did you attack those tasks? At what point in time, approximate date, did you begin to address yourself to those tasks?

A I think it was in that summer after the contract -- somewhere in this July-August period.

Q Did you in fact make arrangements with other writers?

A Yes.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 134]

Q Beginning during that summer?

A Either that summer or early that fall.

Q Did you enter into contractual agreements with these writers?

A I did with one writer.

Q Who was that?

A Well, he was a team at that time. Don Nicholl is his name, and his ex-partner I forget.

Q I show you a copy of Plaintiffs' Exhibit 10 for identification, which purports to be a letter dated September 22, 1970 from Mr. Hayes to Mr. Cohen with a copy to you, and ask you whether or not you can tell us whether you received a copy of that letter, and particularly its enclosure.

A Yes.

Q You did receive a copy?

A Yes.

Q Can you tell us what that schedule is that is attached

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 135]

to this letter?

A Yes. These were deals that were made with writers in September for specific outlines -- story outlines and teleplays if the option was picked up.

And my smile was occasioned by my noticing that the first page doesn't consist of a writer that had a story picked up, neither does the second page, except for Don Nicholl, and I now see his partner was Brian Joseph.

Q Some of these payments that are listed over in the right-hand column were made in August; isn't that correct?

A Yes. As early as September 2nd.

Q There is an August 26th, is there not, and August 17th and so on?

A Right.

Q Does that refresh your recollection as to when you starting going in making the arrangements with your writers?

A It would appear that I didn't need much refreshing, because I said July or August.

Q You were very close. So this would be reflective of the on-going process to work out arrangements with writers to supplement your own efforts in producing episodes for "All In The Family"; is that correct?

A Correct.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 136]

Q Now, in connection with the casting of the two young people, was there some change made in the casting of those two roles from the second pilot to the actual "All In The Family" series?

A Yes. There was a change in casting of those two roles and the other continuing character was the black actor who plays the character of Lionel. He was changed also.

Q When did you enter into arrangements for the two young people -- These are the two younger leads?

A Right.

Q -- and Lionel, do you know?

A Rob Reiner, I think somewhere -- I don't recall exactly when we started shooting, but he was perhaps -- I think we started shooting in November.

Q I show you a letter, which is Exhibit 88 for identification, from Mr. Cohen to you dated August 13, 1970. Do you recognize that letter as a letter you received from Mr. Cohen?

A I don't remember it.

Q Will you agree that you received it?

A The bottom of every letter has another person copied. Yes, I would assume that I received it.

Q This had to do with deals with Jean Stapleton and Paul Zittle; is that correct?

A I don't know who Paul Zittle is.

Q Can you tell us who Jean Stapleton is?

A She's the co-star of "All In The Family."

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 137]

Q Was Paul Zittle somebody that you were considering for the younger male lead before you decided upon Reiner?

A No.

Q In any case Tandem was in the process of working out agreements for members of the cast starting in the summer of 1970; is that correct?

A Yes.

Q Was an agreement entered into with Jean Stapleton?

A Yes.

Q And was an agreement entered into with Mr. O'Connor in due course?

A Yes.

Q Do you know when that was negotiated, approximately?

A I don't.

[EBT p. 138]

Q Were the two younger leads, Mr. Reiner and --

A Rob Reiner, that deal was made sometime before Sally Struthers'. She, as I recall, I set her within a couple weeks of shooting the first episode.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 138]

Q I show you a document which is marked Plaintiffs' Exhibit 95 for identification and ask you whether or not that document refreshes your recollection as to when the negotiation with Mr. Reiner was going forward?

A It's earlier than I thought. No. We must have started shooting in November, and this is about right. Yes, it does.

Q The negotiation with Mr. Reiner was going forward in September 1970; is that correct?

A Yes.

Q Did you also go about attempting to locate an associate director?

A A director and an associate producer.

Q But not an assistant director or an associate director?

A No. Assistant director came later.

Q Well then, did you look forand agree with or contract with a director?

A John Rich was the director.

Q When did you line him up?

A In this same period, I believe.

Q August-September?

A Yes, August-September.

Q Would the same thing be true as to lining up an associate producer?

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 139]

A Perhaps just a little bit later.

Q Who was the associate producer?

A George Turpin, T-u-r-p-i-n.

Q Did you make agreements with anybody with respect to the music that was to be used on the show?

A The song had been written originally for the ABC pilot. We decided to retain it. I don't remember what negotiations or if negotiations were necessary to use it in the new series with CBS. But that was one element we retained.

Q Would Mr. Hayes know about that?

A He could. There is no music in the body of the show, and none was ever intended, but there is music at the end, different music at the end of the show under the credits, and I don't remember the composer's name.

Q Were arrangements made for that in the fall of 1970?

A Yes.

* * * *

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 141]

Q At what point did you move into the CBS facilities or take up residence in any facilities for the purpose of commencing the production activities?

A I would think it was late September of October.

Q What kind of facilities are we talking about that you occupied? What were the physical arrangements?

A We had a group of offices for a production staff; that is, writers, myself, secretarial help. When they use the word facilities they are more specifically talking about the stage space, the postproduction space and the operational personnel: Cameramen, lighting facilities, lighting men and so forth.

Q Was that something that you had to organize or did you take the CBS organization?

A That is something that the director and the associate producer with my approval worked through with CBS using all CBS personnel. It was just a matter of selecting A from B in terms of cameramen, but they were all CBS personnel.

Q And all of these arrangements went forward during the fall of 1970?

A Yes.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 142]

Q Were you aware, Mr. Lear, of any activity by Mr. Cohen starting in approximately December of 1970 to obtain clearance from Mr. Speight or Mr. Speight's representatives for the syndication of "All In The Family" in England through the BBC?

A I am not aware now that I was aware then. I might have been, I don't know.

* * * *

[EBT p. 143]

Q Mr. Lear, I show you a copy of a document that has been marked as Exhibit 9 for identification, which purports to be a letter dated August 18, 1970 from Mr. Hayes to Mr. Sipes with a copy to you, and ask whether or not you can identify that as a document you received.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 152]

A Yes.

Q I see a reference in correspondence, Mr. Lear, to "AD." Is that a reference to associate director?

A Yes, it is.

Q Assistant director or associate director?

A Assistant director.

Q Did you also receive a copy of the McPhie letter which is attached as part of Exhibit 9?

A Yes.

Q There is a reference to "AD" being "below the line" in Exhibit 9, second paragraph. Can you tell us what that concept is, of AD being below the line?

A Well, as I recall the deal with CBS, they were paying below-the-line costs. And from the wording of Hayes' letter, he assumed that the assistant director would be a below-the-line cost.

Q Was there some discussion back and forth with CBS for the purpose of getting them to agree that the assistant director ought to be regarded as a below-the-line cost?

A When this was going on I was working 7 days a week developing scripts.

LEAR DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 157]

MR. PEARSALL: Q Were you aware during the fall of 1970 that Mr. Hayes was making comments to CBS concerning a written form of agreement proposed between Tandem and CBS?

A I am sure I was aware, but the nature of what he was talking about, I don't think I was very conversant with. In that period, again, I was going through all of the steps of developing the program and it was all-consuming.

Q Were you concentrating on going forward with actually producing the show and getting it ready to go on as a television series?

A Yes. It became for me a 7 day-and-night job.

EXCERPTS FROM DEPOSITION OF ANDREW JERROLD PERENCHIO

PERENCHIO DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 3]

Q Mr. Perenchio, can you state your full name?

A Andrew Jerrold Perenchio.

Q Where do you reside?

A 619 North Roxbury, Beverly Hills.

Q Do you have a position with the defendant in this case, Tandem Productions, Inc.?

A Yes.

Q What is that position?

A President and chief executive officer.

Q When did you assume that position?

A On or about January 8, 1973.

Q Are you also a director of that corporation?

A Yes, sir.

Q Have you been a director since that time?

A Shortly thereafter.

* * * *

PERENCHIO DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 12]

Q Have you ever heard of anyone by the name of Dana Murray?

A Yes.

Q Who is Dana Murray?

A Dana Murray is a film distributor, television film distributor, headquartered in Toronto, Canada.

Q Have you had any dealings with Mr. Dana Murray in connection with the distribution of "All In The Family"?

A I had one initial meeting with him, yes.

Q When did that meeting occur?

A I believe sometime in late April or early May this year.

Q Where did that occur?

A In our offices at Tandem.

Q Was there any discussion with respect to "All In The Family" at that meeting?

A Yes.

PERENCHIO DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 12]

Q Can you tell us what that discussion was?

A He had been handling successfully another of our shows -- two other of our shows, "Sanford and Son" and "Maude." We were impressed with the job he had been doing and we told him that we had recently discharged Viacom and that we would like to have him take over the distribution of "All In The Family." And we agreed on the general procedures and then I put him with my associate Allan Horn to work out the details. As I understand it, he in fact did begin on or about June the 1st to represent "All In The Family."

Q There was a deal then reached with Mr. Murray concerning that?

A Yes.

* * * *

PERENCHIO DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 14]

Q Starting on June 1, what did Mr. Murray do, so far as you know, so far as distribution efforts were concerned in connection with "All In The Family"?

A I have no idea.

Q That was when his term of office as distributor was to commence?

A Somewhere in that area.

Q And he was authorized starting on that day to go forward and do what he could to merchandise or distribute "All In The Family" abroad?

A To the best of my knowledge, yes.

Q Do you know what activities he engaged in, or do you know what steps he took?

A No, sir.

Q Do you know whether he in fact got ahold of sub-distributors in any part of the world and authorized them to proceed into the market to attempt to syndicate "All In The Family" abroad?

A I assumed he did, but I don't know first-hand.

* * * *

EXCERPTS FROM DEPOSITION OF ALLAN DAVID YORKIN

YORKIN DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 3]

Q Mr. Yorkin, will you state your full name?

A Alan David Yorkin.

Q Are you sometimes known as Bud?

A Yes, sir.

Q Where do you reside?

A In Beverly Hills.

Q Will you tell us where?

A 904 North Whittier Drive.

Q Do you have any position with the defendant in this case, Tandem Productions, Inc.?

A Yes.

Q What is that position?

A President of the company.

Q What other positions do you have with that company?

A Official positions?

Q Yes. Are you a director, for example?

A Yes, I guess I am.

Q Mr. Lear testified here a couple of days ago that a gentleman by the name of Mr. Perenchio was the president of Tandem. Are there two presidents of Tandem?

A There may be a change within the last month or two, come to think of it.

YORKIN DEPOSITION

(Admitted in Evidence, Trial Transcript p 627)

[EBT p. 4]

Q Do you have a position with Tandem or not?

A Yes. I am trying to think when the change was made. He is right, I forgot about it. About four weeks ago we made a change. I am now a vice president. I was president up through all this period, up to about four weeks ago.

* * * *

Q Are you also a stockholder of Tandem?

A I am.

Q Are you a 50 percent owner of Tandem?

A Yes, I am.

* * * *

[EBT p. 23]

testimony as having occurred on June 24 or thereabouts.

A Right.

Q So that July would carry us past that.

A Well, the only occasion that I would have then was I was involved somewhat with meeting the facilities people at CBS regarding crews, below-the-line budgets and so forth. That would be the only meetings that I would have attended at that time.

YORKIN DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 23]

Q At any time prior to July 22, 1970 did you have any meetings with Mr. Wood regarding "All In The Family"?

A I recall one meeting that Norman and myself, I think with Mr. Wood and Mr. Lafferty here in California, where again there was discussion about making it clear that Norman should stay in close contact with Bill Tankersley. When Tankersley says he is satisfied that he can work with Mr. Lear then we are ready to go, I believe.

Q Did Mr. Lear appear to satisfy Mr. Wood, or did Mr. Wood indicate that he was satisfied that Mr. Lear would be able to work with Mr. Tankersley?

A Yes, I think so.

Q And that would be somewhere prior to this July 22 period?

A Yes.

Q Did you meet with Mr. Jenks or Mr. Schneider, or any other CBS executives, prior to July 22, 1970 in connection with "All In The Family"?

A No.

Q Did you participate in any way in any of the negotiations on the deal itself?

A No, I didn't.

YORKIN DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 23]

Q Either with CBS or with other Tandem people?

A No. When you say I was aware, I had met with Mr. Hayes and I met with Mr. Perlberger, and I was aware -- and Mr. Cohn. We are trying to figure out what the budget is, you know. I was aware of how -- They kept me informed as they were going, and I did enter into discussions in that area.

Q Do you have any recollection of any discussions that you had with anybody in connection with the "All In The Family" negotiations prior to this July 22 point in time that we have picked out?

A That was the day of the signing?

MR. SHELTON: No. There was no signing at that point in

* * * *

[EBT p. 28]

Q Did you ever meet at any time with Mr. Paley or Mr. Wood or Mr. Jenks or Mr. Schneider, or did you have any telephone conversations with any of them in connection with "All In The Family"?

MR. SHELTON: Aside from the meetings he has described, or the meeting he described with Mr. Wood?

MR. PEARSALL: Yes.

MR. SHELTON: Aside from the one you have already described.

YORKIN DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 23]

THE WITNESS: No. With those four people, no, I don't recall any. I know there was one conversation that I think Mr. Wood was in on. Norman and I were on the phone with, I know Fred Silverman was on it, and I think maybe Mr. Wood was, regarding whether we would run the first show or the second show. We had taped three shows at that time and CBS --

MR. PEARSALL: Q This is prior to the initial airing?

A Yes.

Q And it was a question of which episode would be shown first?

A Shown first. Mr. Wood might have been on that phone.

Q And you participated with Silverman and who else?

* * * *

[EBT p. 29]

A Well, I was in Norman's office and we were on the phone talking to, I know, Silverman and maybe Tankersley and maybe Wood. I am not sure. And it was mainly on deciding which show. We had taped three shows, I believe, at the time, and which one would go on the show first.

Q Can you tell us what was said during that telephone conversation?

YORKIN DEPOSITION

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 29]

A No more so than I think CBS would have preferred running the second show that we taped first, because it was not as controversial. I know Norman took a very strong position that we had to run the first show first because of the, as he said, "We will let the chips fall where they may." And I think they finally agreed with Norman on the phone in that discussion.

Q Could that have been in November or December of 1970?

A It had to be -- Yes, I would say sometime around there, because we had taped two or three shows by that time.

Q Do you have any knowledge, Mr. Yorkin, as to what Mr. Cohn's instructions were in connection with the negotiations with CBS of the deal with Tandem on "All In The Family"?

A No. I think his instructions would be no more so than what is normal for the course, to keep us informed and if there was any major point that all of our advisers felt that was wrong, he didn't have the authority to give up or make any deal without us consenting to it.

Q Without consultation?

A That's correct.

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(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 36]

on in the fall as being a problem that you were involved with.

A Again, that goes back to availability and how Norman being available and how that problem would be worked out.

Q And that was worked out on the basis of the $100,000 penalty?

A Yes; right.

Q Were there any other points that you recall having been consulted on in this period? I am referring now to the period May through July 1970.

* * * *

MR. PEARSALL: Let's go on and ask whether or not there are any other points on which Mr. Yorkin was consulted during that period.

THE WITNESS: No. I may have ventured into some discussions on office space and preproduction monies. I might have been involved in that, some discussions in that area.

MR. PEARSALL: Q The preproduction money being the $10,000, $12,000 which ultimately CBS agreed to pay to Tandem on a nonrecoupable basis?

A No. The notion of trying to prepare scripts in advance, I thought we needed some money, preproduction money, if

indeed we were going to get ready to go, and it didn't seem like we would have a contract signed, as is the normal case in most of these things, and then there is no money forthcoming. It's always advisable in these kinds of things, both with motion picture companies and television networks, to get them to put their preproduction money up in advance, because most of the time you finish the picture and it's out in production before contracts are signed, and the same thing with the networks. So I wanted to make sure that we would have the money to pay the writers that were going to work right away.

Q Are there any other points that you recall?

A No.

Q Do you recall whether or not Tandem put out a press release in connection with the arrangement with CBS on "All In The Family"?

A I don't think we did. I think that really came out from the network.

Q The publicity came out from the network?

A I would think so. We didn't have a publicity agent at the time, I don't think.

Q Did they consult with you as to the material that was going to be put out to the press?

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(Admitted in Evidenct, Trial Transcript p. 627)

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A I don't think so, not really. They didn't consult with me, but they may have with Norman. They didn't with me.

Q Mr. Yorkin, I show you two documents that have been marked as exhibits here already in these depositions, Plaintiffs' Exhibit 84 for identification which purports to be a letter dated July 20, 1970 from Mr. Perlberger to Mr. Cohn with a copy shown to

* * * *

you, and Plaintiffs' Exhibit 87 for identification which is a letter from Mr. Cohn to Mr. Perlberger with again a copy shown to you.

I ask you to take a look at them, read them and tell me whether or not you received copies of those two letters.

A Yes.

* * * *

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(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 42]

Q I show you, Mr. Yorkin, a copy of Plaintiffs' Exhibit 29 for identification and ask you to take a look at that and study it carefully and tell me whether or not you can identify that as a letter a copy of which you received.

A Yes, I remember that .

Q Now, this has reference, does it not, to the meeting which you had with Mr. Sipes which you mentioned previously in your testimony this morning; is that correct?

A That's correct.

Q Where did your meeting with Mr. Sipes occur?

A In Mr. Ruben's office here at CBS.

Q In Los Angeles?

A Los Angeles.

Q Who else was present?

A I think only Mr. Sipes, Mr. Hayes, Mr. Lear and myself.

Q Was this close to the end of the run of the first 13 shows?

A Yes, it was.

Q Had there been unanticipated budget problems that Tandem had had in connection with its production of the first 13 shows?

A Nothing exceptional. We did know that the package price was very low and we were having a very difficult time to

(Admitted in Evidence, Trial Transcript p. 627)

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come out with it, so it behooved us to see if there was some way that no one would get hurt and yet we would have enough money to put into the show. It was a very tight budget, to say the least.

Q And you were seeking some adjustments from Mr. Sipes?

A Yes.

Q Do you know whether or not any notes were made at that meeting that you had with Mr. Sipes?

A No, I don't know of any.

Q Would that meeting have occurred shortly before the date of Exhibit 29; that is to say, March 26, 1971?

A I would assume it did.

Q Have you had a chance to look at Exhibit 29?

A Yes.

Q Does that reflect pretty much the substance of the discussion that occurred at this meeting?

A Yes.

* * * *

MR. PEARSALL: I am asking the witness to look at the letter and tell me whether or not it reflects the substance of the meeting with Mr. Sipes, Mr. Lear, Mr. Hayes and the witness.

THE WITNESS: I think it is fairly accurate as to what the substance of the meeting was.

MR. PEARSALL: Q The first point that is referred to in the enumerated items has to do, does it not, with a shift of that

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(Admitted in Evidence, Trial Transcript p. 627)

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$7500 from a participation by CBS in the below-the-line costs into an addition to the license fee so that Tandem would get it whether or not it incurred the costs?

A No. It shifted that over and it meant if indeed we saved anything below $30,000 it would mean more money to us.

Q Just mechanically --

A It shifted the $7500 over to us. Initially we were given $22,500 and anything above that up to $30,000 CBS chipped in and anything over $30,000 we assumed. It now made it --

Q That was the old deal, and it was changed to do what?

A Just made it $30,000 given to us as below the line. It was our problem to make that come within. Whatever we could come in with, we would save.

Q The effect of that, then, would be to increase the $72,500 license fee that was paid to $80,000?

A I think you could say that.

Q That is another way of saying the same thing; is that correct?

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(Admitted in Evidence, Trial Transcript p. 627)

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A Yes.

Q Then I think these other two items are self-explanatory unless you know of something about those two transactions which doesn't appear on the face of this piece of paper.

A No. That's fairly correct.

Q Exhibit 29 is a satisfactory summary of Points 2 and 3?

A Yes, it is.

* * * *

Q At or about the time it was received by Mr. Perlberger from Mrs. Nelson?

A I would say somewhere around that period, yes.

Q During June and July up through the date of that letter, which is July 6, 1971, had you had any conversations with anybody at CBS concerning the deal between Tandem and CBS?

A No.

Q Had you had any such conversations with anybody within Tandem?

A I am sure I must have.

Q Do you have any recollection of any of the points of discussion with any of the people within Tandem?

A Just to clear me up, is this the memorandum after our meeting with Mr. Sipes?

MR. PEARSALL: Let's go off the record here so we don't get confused.

(Whereupon, a discussion was had off the record.)

MR. PEARSALL: Let's go back on the record.

Would you read the pending question, please.

(The pending question was read.)

MR. PEARSALL: Q That was the pending question. Could you answer that question, Mr. Yorkin?

A No, I don't recall any specific discussions.

Q I show you Plaintiffs' Exhibit 56 for identification, which is a letter dated June 18, 1971 from Mr. Perlberger to Mr. Lear, and ask you whether or not you received a copy of that document.

A I am sure I did, yes.

(Admitted in Evidence, Trial Transcript p. 627)

[EBT p. 65]

It just reached the point where -- I was very much familiar with foreign syndication. I was very much aware that we had a payment to be made to AFTRA, we had payments to be made to the Directors Guild, we had payments to be made to the AF of M, we had a tremendous amount of money that had to be picked up. And I was sophisticated enough to know that sometimes it wasn't even worth making a deal because our payment was too high to other people and that it meant no profit whatsoever and a tremendous amount of bother on our part. So this is why I had asked for consultation before he made any deals, before Viacom made any deals, because it would have been a simple factor for him to say how much it is going to cost, here's how much money is going to be netted to Tandem. I could never get those simple things.

Q Mr. Yorkin, you indicated that you were familiar with foreign syndication.

A Yes.

Q How did you acquire that familiarity with foreign syndication?

A Roughly 20 years in the business, having talked to people about it and being fairly aware of what was involved in foreign syndication.

Q Had you ever yourself or any of the companies that you were involved with had any experience or dealings with syndication?

A Yes.

Q Which companies that you were associated with had dealings with syndication?

A Tandem Productions. Norman and myself had done

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(Admitted in Evidence, Trial Transcript p. 627)

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several specials that had been syndicated overseas, and I very quickly learned the pros and cons of foreign syndication.

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